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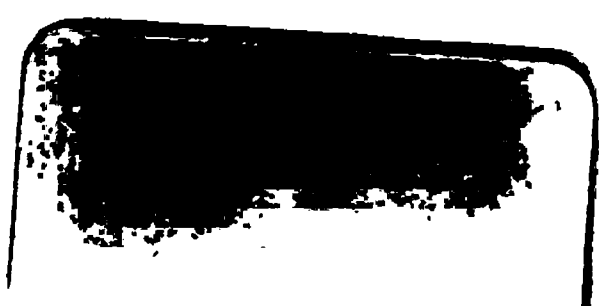
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13
A
COMPLETE COLLECTION
OF

State Trials

AND
PROCEEDINGS FOR HIGH TREASON AND OTHER
CRIMES AND MISDEMEANORS

FROM THE
EARLIEST PERIOD TO THE YEAR 1783,
WITH NOTES AND OTHER ILLUSTRATIONS:

COMPILED BY
T. B. HOWELL, Esq. F.R.S. F.S.A.

INCLUDING,
IN ADDITION TO THE WHOLE OF THE MATTER CONTAINED IN THE
FOLIO EDITION OF HARGRAVE,
UPWARDS OF TWO HUNDRED CASES NEVER BEFORE COLLECTED;

TO WHICH IS SUBJOINED
A TABLE OF PARALLEL REFERENCE,
RENDERING THIS EDITION APPLICABLE TO THOSE BOOKS OF AUTHORITY IN
WHICH REFERENCES ARE MADE TO THE FOLIO EDITION.

IN TWENTY-ONE VOLUMES.

—
VOL. XXI.

18—19 GEORGE III.....1778—1779.

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1816.

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“ In the Will of John Barnard, (son to the late patriotic sir John Barnard, many years father of the city of London) late of the Parish of St. George, Hanover-Square, in the county of Middlesex, esquire, deceased, dated the 6th of November, 1779, among other things therein contained, is as follows: ‘ I give to captain Thomas Baillie; late ‘ deputy-governor of Greenwich Hospital, five hundred pounds, as a small token of my ‘ approbation of his worthy and disinterested, though ineffectual, endeavours to rescue ‘ that noble national charity from the rapacious hands of the basest and most wicked of ‘ mankind.’ ” New Annual Register for 1784 (Principal Occurrences, p. 97.)

II. *To the Case of Lord GEORGE GORDON.*

Lord George Gordon published a curious (and, as I have reason to believe, a true) account of some of his strange proceedings connected with the transactions out of which this Trial arose. The title of his publication was, “ Innocence Vindicated, and the Intrigues of Popery and its Abettors displayed in an Authentic Narrative of some transactions, hitherto unknown, relating to a late Act of the British Legislature in favour of English Papists, and the Petition presented to Parliament for its Repeal.”

In this case of Lord George Gordon were first exercised the privileges granted by stat. 7 Ann. c. 21, to persons indicted for High Treason. See East's Pleas of the Crown, chap. 2, sect. 48; and p. 648 of this volume.

III. *To the Case of the DEAN OF ST. ASAPH.*

Of the Richmond Park business mentioned p. 858, see Vol. 20, p. 1389, and elsewhere.

PARLIAMENTARY WORKS.

Lately Published,

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The Subscribers are informed that Volume XXVII. of the above Work, comprising the Debates in both Houses from the Opening of the Session, November 4, 1813, to June 6, 1814, may be had of their respective Booksellers.—*Peterboro' Court, 31st August 1814.*

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A COMPLETE COLLECTION

OF

STATE TRIALS,

&c. &c.

562. The CASE of the ROYAL HOSPITAL for SEAMEN at GREENWICH, in relation to alleged Mismanagement and Abuses thereof; and of Captain THOMAS BAILLIE, Lieutenant-Governor of the said Hospital, under a Prosecution for a Libel upon certain other Officers of the same: 18 & 19 GEORGE III. A. D. 1778, 1779.*

[The following particulars I have extracted from Captain Baillie's "Introduction to the Proceedings in the Court of King's-bench," &c.

Captain Baillie prepared and caused to be printed, a book entitled, "The Case and Memorial of the Royal Hospital for Seamen at Greenwich, addressed to the Governors and Commissioners thereof." The "Case" I have not seen. It was not inserted in captain Baillie's "Solemn Appeal," "because," as he states, "it might create fresh disputes, is very long, and the greater part recapitulated in the King's-bench and House of Lords." The Memorial he exhibits as follows:

* Extracted from "A Solemn Appeal to the Public, from an injured Officer, Captain Baillie, late Lieutenant Governor of the Royal Hospital for Seamen at Greenwich; arising out of a series of authentic Proceedings in the Court of King's-bench on six Prosecutions against him, for publishing certain Libels (as it was alleged) in a printed book, entitled, The Case and Memorial of Greenwich Hospital, addressed to the General Governors, in behalf of Disabled Seamen, Widows, and Children; and the Evidence given on the subsequent Enquiry at the bar of the House of Lords, in consequence of the several Prosecutions being discharged with Costs. - London: Printed for Captain Baillie by J. Almon, opposite Burlington-house, Piccadilly; and may also be had of Captain Baillie, at Mr. Roberts, china-man, near Hatton street, Holborn. Price two guineas, stitched in sheets, with a fine engraving of captain Baillie, in mezzotinto, by James Watson, esq. painted by Nathaniel Hone, esq. of the Royal Academy, or separately, one guinea each. 1779."

VOL. XXI.

To the Commissioners and Governors of the Royal Hospital for Seamen at Greenwich,

The MEMORIAL of Captain Thomas Baillie, Lieutenant Governor of the said Hospital, in behalf of Disabled Seamen, their Widows and Children,

Humbly sheweth;

That through the various abuses set forth in the Case prefixed, the British navy has been deprived of the full benefit of this wise and munificent establishment, which the generosity of princes, and the gratitude of the public, had bestowed.

That landmen have been introduced into the Hospital, contrary to the charter and to the spirit of the institution; and that some of the principal wards have been torn down, and converted, at a great expence, into grand apartments for officers, clerks, deputies and servants, who are not seamen.

That several thousand pounds are annually expended in repairs and alterations, under the pretext of finishing or carrying on the building, though it is already sufficiently grand, roomy and convenient.

That the settled and ample revenues of the Hospital being wasted by this and other improper means, the present managers, sheltering themselves under the popular character of the poor defenceless men under their care, make frequent application to parliament for the public money, which they squander in a manner that has no tendency to promote the welfare of the pensioners or of the sea-service.

B

That the pensioners are fed with bull-beef, and sour small beer mixed with water.

That the contracting butcher, after having been convicted in a public court of justice (the King's-bench) of various fraudulent breaches of his contract, was, on a second prosecution, suffered to compound the penalties, and renew the contract: and that many evident and injurious abuses in the supply of other necessaries are daily suffered without any due enquiry.

That under pretence of raising a charity stock for the boys in the Hospital, the pensioners are deprived of at least 2,500*l.* per annum out of their frugal allowance of provisions, &c. settled at the first establishment, and are compelled to accept of a part of the value in money; which causes frequent drunkenness, irregularity and disobedience.

That these enormous abuses are the effects of the total subversion which the due government of the Hospital has undergone, arising from the inattention of the great and respectable characters who were appointed its perpetual guardians: and that the acting directors, being in general concerned in the receipt and expenditure of the revenues, are therefore improperly entrusted with the care of controuling the accounts, and of directing the affairs of the Hospital; yet that these men have, by successive encroachments, extended the proper powers of the board of directors, and taken upon them a great part of the government of the house, in the exercise of which they are deaf to every expostulation or complaint, however reasonable in itself, or regularly urged.

That a faction, under the title of the Civil Interest, is maintained in the Hospital, which consists of such officers, under officers, deputies, clerks and servants, as are not seafaring men, and who are therefore illegally appointed; which faction has kept the Hospital in a state of confusion and disorder for several years: and there is no pretence of right or necessity for their continuing in offices to which seamen alone have any claim, there being many brave men fully qualified to execute the business of these offices, who, after having fought the battles of their country, are now in a state of poverty and want.

That, independent of the obvious reflections suggested by justice and humanity on this occasion, the manner in which the pensioners are supported in Greenwich Hospital is a material subject of political consideration; particularly at this interesting period, when the endeavours to obtain volunteers for the navy are unsuccessful. Were a residence in the Hospital considered by seamen in general as a desirable object, it would have an evident tendency to lessen their reluctance for his majesty's service, as the loss of temporary advantages, or the dread of approaching hard-

ships, can only be balanced by the hope of spending a comfortable old age. Now, the Hospital is so far from answering this valuable purpose at present, that it is mentioned among seamen with disgust and dissatisfaction.

Till some effectual means are taken to remove this opinion, the material object of the foundation is entirely subverted, and the Hospital become an useless and expensive burden to the nation. This can only be done by an entire change in the management, and by faithfully and honestly expending the ample revenues in the due maintenance of seamen only. The news of such a general reform in the affairs of Greenwich Hospital would be received in the navy with joy and gratitude.

The lieutenant governor thinks it necessary to represent, that in this application to the several members of the court of commissioners and governors, he has no interests for which he can hope or fear on his own account: he was placed in the Hospital by lord Anson, after a life of active service, with a view, as he presumes, that he might pass his remaining days in peace and retirement; but the sixteen years which he has spent in the Hospital have been the most painful, harassing, and disagreeable of his whole life, as he has, during the greatest part of this term, been inevitably engaged in disputes and litigation with jobbers, agents and contractors, and in opposing the civil interest of this naval Hospital, with whom he never had any other point to carry, than that the pensioners should be peaceably and comfortably maintained, agreeably to the intention of the founders, and to the establishment of the Hospital.

That the contest, so far as he is concerned in it, must, in the course of nature, be now nearly finished; but it appears to him an indispensable duty, to state the leading circumstances of the atrocious facts which have been committed during his residence in the Hospital, to those who are in possession of the legal powers necessary for the speedy removal of the several causes of complaint herein recited,—in order that the ineffectual struggle which he has hitherto maintained may not be urged as an example to deter his successors from the performance of their duty. The threat of this appeal, though on many occasions it had produced salutary effects, has however lately been disregarded, from an opinion that it would never be made. It therefore became necessary that it should be actually made; and, though some parts of the prefixed Case may seem rather tedious in the recital, yet the whole is confined to real instances of fraud, collusion, and incapacity, all of which can be proved by the clearest and most indisputable evidence.

The lieutenant governor takes the liberty to

urge, in the most earnest manner, his anxious hope, that these complaints may excite a necessary degree of attention in the several great and noble personages to whom they are now addressed; that a full court of commissioners and governors may be held, by whom these several charges may be heard and examined, the present evils redressed, and effectual means devised for restoring the Hospital to the navy, and for the proper maintenance of seamen therein. When have the interests of Britain been deserted, or her defence neglected, by her navy?—It cannot be supposed, that a complaint of this magnitude, and importance to seamen worn out and disabled in the service, can in this country be urged in vain.

Amongst the leading measures to be adopted for the re-establishment of the Hospital, it will be necessary,

That the sixpenny receiver from seamen's wages, the accomptant and comptroller of the sixpenny-office, the several prize-agents, surveyor, and chaplain, be removed from the direction; and a rule made, that their successors be never in future appointed directors of Greenwich Hospital.

That persons of respectable and independent characters be appointed in their room, under such regulations as may be judged sufficient to induce and oblige them to attend the important objects of their duty; and they be made responsible for the due execution of the trust. With respect to the present direction, the old proverb, that every body's business is nobody's, seems to be truly verified.

That instead of the great number of governors, and the twenty-four directors, if five commissioners were appointed, at 500*l.* per annum each, for the sole care of receiving, and faithfully and frugally expending, the ample revenues of the Hospital, the poor men might be nobly provided with every necessary article of life, and more than the salary of such commissioners saved out of unnecessary works, repairs and alterations, in which case the Hospital would probably in a few years be restored to its proper degree of estimation and use.

That if the present unwieldy body of governors, commissioners and directors, should not be reduced to five commissioners, two of the captains be restored to the direction, of which their predecessors were deprived for being strenuous in the noble cause of protecting the seamen under their care.

That the internal government of the whole house be restored to the governor and council: that this council do consist of the deputy governor, the four captains, and only four, instead of the eight lieutenants: and that the secretary, steward, and chaplains, be removed therefrom, to prevent the forming of parties to embarrass and out-vote the principal officers of the house,

whenever they think proper to appear in council, thereby disturbing the peace and good government of the Hospital, for which the superior, and not the inferior officers, are responsible.

That the two chaplains, the secretary, steward, and auditor, with several under-officers, deputies and servants, who have not been sea-faring men, and whose appointments are therefore illegal, be discharged the Hospital; and that navy chaplains, and other warrant officers, &c. be appointed in their room.

That two of the three matrons, not being the widows of sea-officers, be removed from the Hospital, and proper objects appointed in their stead, as there are now the widows of twenty-four officers of different ranks serving in the mean capacity of common nurses under these matrons.

That Greenwich Hospital be, for the future, preserved, inviolably and exclusively, for the navy, as an asylum for disabled seamen, their widows and children; and that, for their better security, the charter (in which several essential words, and even clauses of the old commissions are omitted) be surrendered to his majesty, and an humble petition presented for a new one, more consonant to the old commissions.

That the apartments of the several officers who have no concern with the internal business or government of the house be restored to the Hospital, they having no business but with the court of directors, of which the principal meetings are held in London.

That the Royal Sovereign ward, in king William's building, now possessed by the secretary's clerk, be restored to the pensioners.

That the office of clerk of the works, being an useless office, be abolished, as there can be no plea of necessity for such an officer, whilst there is a surveyor, and no new buildings carried on: that the present clerk of the works be obliged to surrender to the wards the suite of apartments he possesses, and to restore the posts and rails, which out of mere caprice were lately destroyed, though erected, at a considerable expence, round all the outer walls of the Hospital, for the safety, ease, and comfort, of the blind, lame, and infirm pensioners, who are now frequently hemmed in between two walls, to their great terror, and at the risk of their lives from droves of horned cattle, horses, &c. These walks, which were formerly called the Blind Men's Walks, are now become common nuisances to people of all ranks who visit the Hospital.*

That the apartments of the lieutenants Gordon and Kerr, of the clerk of the cheque,

* These posts and rails extended nearly one mile, and were erected on account of a poor pensioner being killed on the spot by a cart.—Orig. Ed.

and of two of the matrons, be restored to the wards; and that lodgings be found for them in the apartments of the non-qualified officers, or in the new building now occupied by the governor's clerk, steward's clerk, and a person called the clerk of the works' clerk.

That the clerk of the cheque's clerk's apartment be restored to the wards.

That all the public passages, windows, doors, and stair-cases, which have been monopolized, be thrown open for the convenience of the officers and strangers who visit the wards, and for the admission of fresh air, which is so necessary to the health of the numerous inhabitants. The stair-cases now in use are narrow and dangerous, and, in case of fire, would be insufficient for the retreat of a crowd of people, as some of the principal wards are barricadoed up at both ends for the magnificent accommodation of individuals, who have converted the grand passages into galleries for pictures, and the roof into lodging-rooms with chimnies, where none were originally designed.

That the butler's list and chalk-off list, which are so hostile to the establishment, be totally abolished; and that the tables in the dining-halls be filled with pensioners, and served with their full allowance of provisions; it being intended, according to the rules of the house, that they should dine in public, as a spectacle for the encouragement of seamen. The soup-maigre now served to the men dishonours the Hospital, and was publicly ridiculed in the dining-hall by his excellency the Duc de Nivernois.

That such of the pensioners and nurses, as from age, infirmities, or other reasonable causes, shall be put on the money-list by the governor and council, and not by the directors, may receive the full value of their provisions; and that the late order procured by the secretary from the general court, to empower the directors to dispense with the mustering the pensioners on certain occasions, be rescinded, as being repugnant to the charter, and infringing upon the government of the house, and the custom of the Hospital.

That the charity stock be thrown into the general fund of the Hospital, and such boys as may be judged proper objects of this charity be better fed than at present, as a growing boy requires at least as much sustenance as an old man.

That the pensioners and nurses on the money-list shall not be deprived of their festival dinners; which is an extra-gift to all without distinction, in commemoration of the five great anniversaries,

The royal founder's coronation,—king's birthday,—queen's birthday,—accession, and the coronation.

The non-enjoyment of these days of mirth

and festivity is a real grievance to three or four hundred poor people.

That two lieutenants be present at the dining-halls, at dinner; and that the chaplain of the month say grace, instead of an old pensioner.

That the captain or lieutenant of the week do always see the meat delivered and weighed, agreeably to a former minute of the council, in order to increase the present checks, which have been found insufficient. This laudable regulation has been lately overruled.

That the steward's clerk be never in future allowed to perform the duty of the clerk of the council.

That the secretary make all the contracts, as formerly, agreeable to established forms, in order to avoid the great expence of attorney's bills; and that he be not permitted to make a bill for travelling charges, being allowed 20*l.* a year for that purpose.

That the stewards of the Derwentwater estate, and the receiver of the sixpences, be obliged to remit to the treasurer and receiver-general all such money as they may receive on account of the Hospital, as soon as it shall amount to the sum of 500*l.* in order that there may be but one treasurer: and that the board of directors be not allowed to extend their proper powers by impresting, or advancing large sums of money to contractors or tradesmen, as the warrants for the payment of all monies ought to be signed quarterly at the general court.

That all admeasurements of the works of the Hospital be made with the assistance of a sworn surveyor; and that all the works, alterations, and repairs, be sworn to before the barons of the Exchequer, by the surveyor of the Hospital, the clerk of the check, and the clerk of the works, as having been faithfully and truly performed, according to the best of their skill and judgment; in conformity to a minute of the board of directors in the year 1718, and to the custom of those times when the affairs of the Hospital were conducted with integrity.

That the steward be sworn to all his accounts and disbursements, being near 30,000*l.* per annum.

That the receiver of the sixpenny office (as well as his clerk) be sworn to his accounts and disbursements.

That the brewer be sworn to the faithful and frugal expenditure of the malt and hops; and that, if any beer be condemned on a regular survey, the value of good beer be deducted out of his wages.

That the household and other accounts of the Hospital be examined at the table where the board of directors sit, and not partially and superficially passed by two interested members, at a separate table; and that five of the directors, after proper examina-

tion, do attest the said accounts with their names at length, instead of the initial letters of two names only.

That all the accounts and disbursements of the Hospital be sworn to, before the barons of the Exchequer; which is now performed partially.

That the auditor be obliged to audit all the accounts of the Hospital.

That the pay of the lieutenants be made equal to the pay of the two chaplains, as originally intended.

That the general courts be held four times at least in the year, agreeably to the first commissions, the business of this court being much increased: that due notice of the several meetings be given in the Gazette, and the business made as public as possible, instead of being privately passed, it being a matter of public concern.

That these courts be held in the Painted-hall in the Hospital, in order to add to the splendour of the meetings, by accommodating a sufficient number of great personages, for the more effectual protection of seamen, their widows and children.

All which premises are most humbly submitted to the wisdom and humanity of the right honourable the lords and other commissioners and governors of the royal Hospital for seamen at Greenwich (who are the guardians and guarantees of the rights of seamen in the said royal Hospital, and who alone are able to give the poor pensioners speedy and effectual relief) by their most respectful and faithful servant,

THOMAS BAILLIE.

On March 7th, 1778, captain Baillie laid before the earl of Sandwich, at that time first lord of the Admiralty, a copy of the said book, together with the following Letter:

To the Right Honourable the Earl of Sandwich, addressed on his Majesty's Service.

As your lordship has hitherto been disposed to hear only one side of the affairs of Greenwich Hospital, I take the liberty to enclose for your lordship's consideration, a State of Facts, which I trust will stimulate your lordship to redress the grievances therein complained of, and thereby restore me to my proper command in the Hospital, of which I have been deprived by a combination of landmen, who, if they had any right to a footing in the Hospital, can have no pretence to pervert and depose the lawful government thereof.

I have the honour to acquaint your lordship, that I will not sit down contented to see the men cheated and myself insulted by priests, clerks or contractors. I think it, however, my duty to forewarn your lordship, that if you are any longer deaf to reasonable complaints, I shall put this effort for redress into execution, which I should have deferred for a more seasonable oppor-

tunity, but the recent overbearing conduct of the faction, so frequently alluded to in the enclosed Case, has compelled me to struggle for immediate redress.

I would not have your lordship understand that I mean to disturb government at this critical time, by applying to parliament. I scorn the imputation of making any other appeal than to the body of the commissioners and governors of the Hospital, whose bounden duty it is to hear and redress the grievances complained of; and I most sincerely lament that an establishment so truly popular and great, should be so far perverted as to force me to make any appeal. I am, my lord, your lordship's most obedient and most humble servant,

Royal Hospital, Green- THO. BAILLIE.
wich, March 7, 1778.

To this Letter captain Baillie received no answer, but on March 16th, it appearing that Mr. Cooke, lord Sandwich's chaplain, had seen the printed Case several days before, and had mentioned it in many companies, captain Baillie then carried copies of the Case and Memorial to several of the governors and commissioners, particularly to the first lord of the treasury (lord North,) the lord president of the council (earl Gower, afterwards marquess of Stafford,) the three secretaries of state, and four admirals.]

IN THE KING'S-BENCH.

Monday, November 23, 1778.

The KING against THOMAS BAILLIE, Esquire, Lieutenant Governor of the Royal Hospital at Greenwich.

THIS cause came before the Court upon the following rule being granted on July 7, 1778, viz.

"Tuesday next, after three weeks from the day of the Holy Trinity, in the 18th year of king George the third.

"*Kent.*—Upon reading the several affidavits of James Stuart, esquire, and two others, the said James Stuart and another, Robert Mylne and another, John Godby and another, John Ibbetson, esq. and another, and of the reverend John Cooke, clerk, and another, it is ordered that the first day of next term be given to Thomas Baillie, esq. to shew cause why an information or informations should not be exhibited against him for certain misdemeanours, in publishing certain scandalous libels, upon notice of this rule to be given to him in the mean time.—On the motion of Mr. Solicitor General,

"By the Court."

The joint affidavit of James Stuart, Thomas Hicks, and the reverend John Cooke, three of the directors, was read, and also the affidavit of Thomas Baillie, esq. defendant, in answer to theirs; the separate affidavit of James Stuart, as surveyor, was also read, and

the affidavit of Robert Mylne, clerk of the works, was begun. But the Court asked, If all the complainants went through what was said with respect to themselves, and being answered, Yes, desired Mr. Bearcroft to proceed in shewing cause, and reserve those affidavits till they were thought necessary to be read.

Mr. Bearcroft :

My lord ; this is an application for leave to file one or more informations against captain Baillie, lieutenant governor of Greenwich Hospital, as the author and publisher of a printed libel, upon the gentlemen who are named in the rule ; three of them as directors of the Hospital, and upon Mr. Stuart, in the separate character of surveyor of the Hospital, Mr. Mylne as clerk of the works, Mr. Godby as steward of the Hospital, and Mr. Ibbetson as secretary to the directors, together with the reverend Mr. John Cooke as chaplain of the Hospital.

My lord, this rule is for leave to file one or more informations, and, I observed, one of your lordships asked just now, why it was, that separate affidavits were made by the same persons of matter contained in the same book ? I beg leave to answer, that it was for the purpose of adding to the oppression and vexation, which the prosecutors meditated against captain Baillie, because those purposes would be better answered by six informations than one ; but Mr. Solicitor General, with more mercy, though perhaps not a great deal more judgment, than his clients, thought they had a better chance to succeed in one than in six informations. I remember upon his instance, it was, that the motion for the six informations was consolidated into one rule.

My lord, I have no difficulty to say, I thought the judgment of the prosecutors very extraordinary, in making this motion ; for by taking this step, it is likely to call down the attention of the public to the transactions in Greenwich Hospital for many years last past : however, upon the present occasion, I find it my duty to contend before your lordship, this rule ought to be discharged, and discharged with costs, otherwise the Court will not do justice to captain Baillie, neither will they do that justice upon the prosecutors of this rule, which they deserve, for daring to make this kind of application. My lord, from the principles of justice, I apprehend, and have no doubt, the Court will soon believe this printed book, which is now attempted to be prosecuted as a libel, is so far from deserving that name, that it tells a tale to the public, which it is fit the public should be acquainted with ; that it is a merit in the party that has stated it ; that he has proceeded in all the circumstances that have been printed in this book, that does him great credit and honour.

My lord, in order for the Court to understand the matter now before them at all, it

will be necessary, in the first place, for the Court to know the constitution of Greenwich Hospital, so far as it stands at present.

The corporation consists in general of some of the first characters in point of rank and ability, in the nation, who are all governors and commissioners, who have a power, if they please to exercise it, of controuling and directing every thing, in respect to the management of the Hospital : but as it cannot be supposed, all the persons there named, who are in high situations, and employed in matters of great importance to the state, can attend to the business of the Hospital, in fact, it has happened, that but few of the governors have attended to the affairs of Greenwich Hospital.

They have power to hold general courts, and general meetings of governors and commissioners, in which they give absolute directions, touching any thing they think proper. But the immediate business of the Hospital has been constantly done by a body of persons, constituted by the charter, and called the directors, and by other persons, within the Hospital, called the governor and council ; the departments of these two separate descriptions of men, the directors, and the governor and council, are very different : it is the business of the directors to superintend and direct every thing that relates to the revenue, accounts, contracts, and building, and every thing, in short, that relates to money matters, for the real internal and external interest, if I may so call it, of the Hospital.

It is the business of the governor and council, who are or ought to be naval officers, to protect the numerous objects of the establishment, to direct and controul the internal government of the Hospital, and see there is good behaviour and proper subordination observed therein, and that every thing is conducted agreeable to the rules of the Hospital ; these are the two separate departments of the directors, upon the one hand, and the governor and council, upon the other hand.

My client, captain Baillie, in 1761, came into the Hospital, being disabled in the service of his country, and was a captain upon the establishment, as it is called—about five years ago, he succeeded to the second office, that of lieutenant governor ; I beg pardon for saying succeeded, I mean to take away, according to the information I have had, the slander which has been industriously spread against captain Baillie, as if by his proceedings, in the course he had taken in the subject before the Court, he had been suspended for ingratitude, or what is called flying in the face of his patrons and benefactors : it was certainly not so—his character has been enquired into, and he is found a person as incapable as any man living, of being guilty of any baseness.

My lord, I said he succeeded, I do not mean that it was an absolute right, but it is so much of course, that the next senior cap-

tain, when there becomes a vacancy, should succeed to the office of lieutenant governor, provided there is no objection to his character; and from the good behaviour of captain Baillie, it seems there never was the least objection to his character or conduct.

My lord, I will first make a few observations as to the matter whereon these affidavits turn, upon which the application is made to the Court. Still, I fairly confess to your lordships, in this observation, and in almost every one I shall trouble your lordship and the Court with, my chief object is to obtain costs for my client: that this rule will be discharged, I have not the least doubt; for if the gentlemen were likely to succeed to make it absolute, I do not believe any mortal breathing would ever advise them to go for damages, but the circumstances are very material in respect to costs.

Now they have picked out of this printed Case between fifty and sixty different paragraphs; I will not call them paragraphs, as there is hardly a whole one, they are pieces of paragraphs, bits of sentences, half lines, and independent expressions; perhaps, I am incorrect in calling them so, because all these I have spoken of, are general conclusions from particular facts and circumstances, that are precisely, clearly, and pointedly stated in this book.

Your lordship will now see why they chose to pick out the particular charges that are in the book; though I always understood the particular story of a man was a much greater libel than a general reflection, but they chose to point out a general conclusion of those facts, to give them an opportunity of doing all they have done; but they conclude, after three or four sentences are picked out—"These deponents say" (as if every thing else was true) "so far as they tend to criminate us A. B. and C. they are all false." Then the reason is obvious, why they did not pick out the particular charges; it is, because they thought they might shelter themselves under the general expression, "So far as they tend to criminate us, they are all false;" and, I know, they could not state, in this application to the Court, the particular charges, and do what was incumbent upon them to do—to swear they are false—for they know them to be true.

Those are the observations upon the affidavits that have been read, and I call upon my learned friends to know, whether, in all they have read, this is not the course constantly taken, and I submit no other reason can be given for it. My lord, it is extremely difficult to attempt it, if I was correct enough in my instructions to do it, to attend to all the particular charges, and answer them separately; it would take up an infinite deal of time. It is sufficient, that two of their affidavits have been read; but I will state to your lordship the nature of certain charges, and the answers to those charges, in which

the Court will see sufficient to lead their attention to the other affidavits, when they come to be read, and what are the charges to which the answers are applied.

Captain Baillie first of all says in his affidavit, and I trust nobody will think it improper to state to your lordship, as he has a proper authority for so doing, that he has served his king and country for near forty years; that he has risen to the rank he held when he was appointed to the Hospital, which was considerable, in consequence of his courage and conduct shewn upon many occasions, which is shortly pointed out, not by any interest or influence, but by good behaviour only, recorded at the Admiralty;* thus he finds himself in the situation of lieutenant governor, who is in truth the first resident officer of Greenwich Hospital. It is his business to look daily into the affairs of the Hospital, to see what they are about, and how the seamen are provided for. In this situation he tells your lordship, for a considerable time past he observed certain abuses, which when they come to be attended to, are of a sort and size which not only justifies what he has done upon this case, but that his duty actually called upon him to do it. He says that very soon after his appointment he saw a great number of the rooms and the cabins, which were appropriated for the accommodation of the seamen, taken away for the purpose of accommodating landmen, as I see the phrase is in the Hospital; and your lordship may see these complaints frequently reiterated in his printed Case, of its being notorious, that a great number of landmen have of late years been introduced into the several places, as officers and servants of Greenwich Hospital, who by the charter expressly ought not, and in the nature of things, in point of custom and usage, those offices ought to have been filled with seafaring men. There are a great number of facts, of the cabins of the

* See the following Letter of Mr. Cleveland (late secretary to the Admiralty) to captain Baillie, on the 30th March, 1757, which happened during the administration of the late right hon. earl Temple, at the Admiralty, to whom captain Baillie was entirely unknown.

" To Captain Baillie, Tartar, Spithead.

" Admiralty Office, March 30, 1757.

" Sir; I have received and read to my Lords Commissioners of the Admiralty your letter of the 28th instant, giving an account of your having taken a French privateer of 24 guns, belonging to Havre-de-Grace; and I am commanded to acquaint you, that the Navy-board are directed to purchase the vessel without loss of time, and to register her in the list of the navy, by the name of the Tartar's Prize, and to establish the number and nature of guns she now has, and 160 men in her; and their lordships have appointed you to command her, as a reward for your behaviour.

" I am, Sir, your most humble servant,

" J. CLEVELAND."

" Entered at the Admiralty." *Orig. Ed.*

seamen being taken away, to introduce and accommodate landmen into offices and lodgings in the Hospital. This shews Mr. Secretary Ibbetson's separate application might have been with great propriety made general, it falls under the general head of complaint. I think eleven of the cabins were knocked down almost about the poor fellows ears, to make an apartment still more magnificent for Mr. Ibbetson, and double that number for his clerk. I cannot express myself better upon the subject, than one of the poor pensioners did upon the occasion, as he was pulled out of his bed and hobbling down stairs, the old man shook his head and said, "Ah! this is very hard indeed! that so many fighting men should be turned out of their beds for one writing man;" as I have already stated to the Court, a vast number of offices, which were lucrative, and in the hands of seamen formerly, have now got into the hands of landmen.

In doing my duty by my client, I cannot help following his instructions. It seems he has found out that by a most wonderful operation of fortuitous events, a particular sort of men which you find in all these places, are freeholders or burgesses of Huntingdon. So far it is necessary to take notice; for if not, the whole of the complaint, at least most of it is attributed to such kind of proceeding, which accounts for most of the subjects I have spoken of.

Court. What says the charter about it?

Mr. Murphy. It excludes persons that are freeholders or burgesses of all counties, as well as Huntingdon, if not seafaring men; the words are, "No officer shall be employed in the Hospital but seafaring men, or such who have lost their limbs, or been otherwise disabled in the sea-service."

Court. I doubt whether they will find a writing man taken notice of there as excluded?

Mr. Beavereft. Capt. Baillie says he was exceedingly unwilling to take the course he did. He says upon his taking notice of the several abuses committed, he the lieut. governor and the council did frequently apply to the directors in order to remedy such abuses, but their applications were in vain, and cold water was thrown on them. He states to your lordship that he applied several times in writing to the First Lord of the Admiralty without effect; and upon an interview with his lordship at the Admiralty, he was told he would not let business go on; but not content with having his application thus rejected by the First Lord of the Admiralty, captain Baillie swears he left his printed Case and Memorial sealed up with a letter for lord Sandwich, requesting that his lordship would look into the affairs of the Hospital; that on the ninth or tenth day he saw his lordship, who abruptly told him, in the presence of Mr. Stephens, the secretary, that he had no commands for him. After such reception,

and not before, captain Baillie seeing, and to his honour feeling, as it became him to do, the injuries that were daily arising to the objects of his care, thought there was no possible chance of redress, but by applying to the body of the commissioners and governors at large, to whom he did apply on the tenth day. And he swears positively, that his printed Case, which these gentlemen that prosecute the rule find to be a libel upon them, was printed solely for the purpose of laying before each separate governor and commissioner of the Hospital, the nature of his complaints, in order to beget an attention in them, and to procure, if possible, by that means an efficient general court, that might inquire into and reform the abuses. This he positively swears was his sole object in compiling, in printing, and delivering the several copies of those he has delivered; which he swears he delivered only to such governors, to his own counsel, and one or two to his own friends, for their advice and assistance when he was threatened to be attached at law. And I trust, your lordship will find that every separate charge of the facts therein mentioned are true, which alone is an answer to an application for an information; but there is not a colour to consider it as a libel, because it is a representation of complaints fit to be made to those whose duty it is, and who have authority to hear and redress them; therefore it is impossible to consider this as a libel.

In the first place, my lord, I take it to be the established practice of this Court in all cases, upon a motion for an information for a libel, to grant a rule of the information be true, though in point of law it is nevertheless a libel for being true; yet the Court will not permit them to go on in this extraordinary way for an information, especially if your lordships find this printed Case was not printed for the purpose of publication to the world, nor for the purpose of exposing particular persons to the public; but for the mere purpose of stating facts in a plain, but in a strong manner; and it was fit in this case he should state them, as he has in a very pungent manner in many parts of it. If that be the complexion of the business, I trust your lordships will most undoubtedly discharge this rule with costs.

Now, my lord, I will go through shortly, as well as I can, those parts of their affidavit which state the supposed charges upon them, as far as they condescend to particulars at all, and explain very shortly the answer captain Baillie gives to their complaint, which answer I may once for all say is chiefly thus: that true it is, I did mean all this you suppose me to mean in general, and more particularly, and it is all true; and captain Baillie has himself gone through the particulars, and sworn they are absolutely true; and notwithstanding the pains taken at different times to prevent the officers and pensioners from making any voluntary affidavits, and every

mortal of Greenwich Hospital believe they committed a very great offence against the high powers, and would be punished at proper opportunity if they did; yet it is not to be wondered there were to be found amongst such gallant officers and seamen, a great number of persons who joined with Mr. Baillie in proving the truth of the facts of every charge, which the prosecutors chose to pick out, and put in their affidavits in their own way, and upon which they found their application to the Court.

My lord, the nature of the first charge your lordship finds by the affidavits is, "Though there are twenty-four directors, yet in truth some of them very seldom attend, except for the purpose of presenting or nominating a charity boy upon the foundation; that others seldom interfere in the business, or stay after the secretary has taken notice of their being present, and that only to give a sanction to the proceedings of the court." This is a sort of thing upon the mere stating, every body would hardly believe, but captain Baillie swears it to be true, and if the books of the Hospital were referred to, it would appear so: and many of the twenty-four directors hardly ever attend at all, others attend for the purpose of some little emolument to themselves. Your lordships seem surprized that these charges should be stated as true, but many of those gentlemen receive ten shillings for their daily attendance; notwithstanding the charter allows that ten shillings, it is given under this restriction, to those who shall think reasonable to demand it; how shameful it is to demand it! yet the demand is always made.

The directors who chiefly attend, it is stated, are the very persons concerned in the receipts and expenditure of the Hospital money; that is sworn to be true, and it most undoubtedly is so, that the persons usually attending, are those gentlemen who are so nearly concerned. The surveyor of the Hospital and receiver of the monthly sixpences from every seaman in the merchant service, and the persons now complaining to this Court, are the persons that usually do attend.

Mr. Baillie says, and insists it is true, that he has very often complained of this, but he has not had any redress at the meeting of the directors, though he is one by virtue of his office; he also pressed them to enquire into the accounts and the vouchers of the receiver of the sixpences, but Mr. Hicks himself was always present as a director, and interfered and prevented any close examination of those accounts.

He says and swears to the fact of the freedom of debate being interrupted, and it is notorious it must be so, and there ought to be a freedom of enquiry into the money expended, and into the state of the accounts; but that has been prevented by these acting directors, those persons being present who were to allow their own accounts, and their

presence must have a considerable weight when such enquiry was to be made; the Court must see as I do what must be the consequence. Then it seems Mr. Hicks was never at sea in his life, but is a freeholder of Huntingdonshire.

Court. What is his office?

Mr. Sol. Gen. Receiver of the sixpenny duty paid by the seamen.

Mr. Bearcroft. With respect to the next observation, nobody will dispute that the agents for prizes ought not to be directors. One very great income for the support of Greenwich Hospital is the prize money that is unclaimed after three years, and at this moment I believe (I don't know whether I am perfectly correct in the sum) the prize money unclaimed amounts to 70,000*l.* and upwards.

Now, my lord, as for the prize-agents, it is not their interest to settle accounts with the Hospital, but to keep the prize-money in their hands. It is the business of the directors to compel those accounts and the payment of the balance, the reason is obvious.

Court. How are the directors made, named, or appointed?

Mr. Bearcroft. They are named by the charter.

Court. How are the vacancies filled up?

Mr. Murphy. By the Lords of the Admiralty.

Mr. Bearcroft. My lord, Mr. Baillie is complained of for having said, in his book, that the independent directors seldom interfere in the business, though they happen to be present, having found by experience it is totally useless: this the complainants chuse to suppose relates to them. To this Mr. Baillie answers, with great truth, and some humour, that when he speaks of the independent members, he does not mean to speak of the reverend Mr. Cooke, Mr. Stuart, or Mr. Hicks.

Mr. Solicitor General. Mr. Baillie is a director now.

Mr. Bearcroft. He is nothing now, he is suspended from his office, in consequence of the proceedings, at what was called a committee of enquiry. It is wonderful to conceive, how it should get into their affidavit, that captain Baillie complains, the commissioners and governors at large are never summoned—Is it not true? Your lordship may know it—though you are a governor, you never had a summons.

Earl of Mansfield. No, I never had.

Mr. Just. Willes. I did not know I was a governor till now.

Mr. Bearcroft. My lord, it is fit all the members of a corporation should be summoned, and I am a little astonished it has not created a new place of summoner, or something of that sort; it might be worth purchasing perhaps, but nothing of that sort is done. It is, however, a subject of com-

plaint that they had never been summoned.

Court. It would be a large summons, I perceive, by the charter.

Mr. Bearcroft. Amongst the rest of the facts there is this one. I see that there is a charge in the supposed libel of a deficiency in one Ellis, the steward's accounts, of three thousand five hundred and fifty odd pounds, and likewise a great quantity of stores, to a considerable amount in point of value—this is notoriously true—it is sworn to by captain Baillie, as appears by his affidavit, and others, that this steward Ellis was deficient that sum, and he was permitted to lurk about the office a considerable time without prosecution, or any method taken to get the money; at last he absconded, and no enquiry was made farther about the matter. This is one of the charges in the book against the directors, and this is literally true, though they are pleased to call it a supposed deficiency. My lord, I forbear, though I see I have notes of many circumstances, not so well worth while to go into, but amongst other things it is fit to attend to this charge, that is, that for the emolument of the persons concerned, the pensioners have been served with bad meat of all kinds, and of a very inferior quality; in particular, one charge is stated, and that part of it, I am sure, is true; I am persuaded it is in your lordship's memory, that the contracting butcher, Mellish, I think the name is, who contracted to furnish the best of meat, and to be paid the best price; whereas it was proved he furnished meat of a very inferior kind, such as bull-beef, and putrid veal.

Court. Bull-stag-beef is the phrase for it.

Mr. Bearcroft. Your lordship will find the breach of contract was a long time before it was prosecuted, and at last, the penalties were not insisted upon; and they were, in my apprehension, very improperly compounded; and that same butcher was afterwards contracted with, and still supplies the Hospital, though it was known he dealt with the butchers in the neighbourhood for bad meat of all kinds; what signifies the contract, if he has in many instances incurred penalties, to a very great amount indeed, by having totally disregarded the contract, in supplying bull and bull-stag beef?

Court. Was he not twice prosecuted?

Mr. Bearcroft. Yes, my lord, my affidavits prove it, and state that all the particulars are true. Then it states that the apartments of several landmen in offices were enlarged, and a great number of expences incurred to make alterations and additional buildings by no means necessary; whilst the poor pensioners had besides, bad beef, bad beer, bad washing, bad shoes and stockings; and to shew the proceedings to be gross to a degree of shame, there is a charge of persons conveying large quantities of water through pipes into the small beer, and sworn to be true. There are some paintings in the Hospital, that are

shewn to strangers and others. It seems they wanted cleaning, and there was 1,000*l.* paid by the directors, which is a very large sum of money, for the purpose of cleaning these pictures; and when the particulars of the real expence are gone into, it turns out that one hundred and fifty pounds or two hundred pounds, was the expence really and truly incurred, and what was necessary, might have been done for less, if they had chose it—These are the sort of complaints that have been enumerated by captain Baillie, which he laid before the first lord of the Admiralty, having frequently applied to the directors in vain: however, it did at last produce a committee of inquiry, and that committee acted contrary to the true spirit of such a committee; Mr. Baillie applied to the Board of Admiralty for a fair and regular enquiry into the truth of those charges, for the purpose of general reformation. But your lordship will see by the manner of appointing the committee, and permit me to say, by the conduct of those gentlemen, at their several meetings, it was clearly shewn their object was not for enquiring into facts for the purpose of redressing grievances, but their great object was, if they could, to find some charge, right or wrong, against Mr. Baillie, to turn him out of his office in the Hospital—that was the object of their enquiry. Your lordship sees captain Baillie's complaint is against the directors. Your lordship will be surprised to learn, that when application was made to lord Sandwich for an appointment of disinterested persons to make an enquiry, his lordship very coolly applied to Mr. Baillie, and desired him to name seven directors; says Mr. Baillie, that is strange indeed, my complaint is against the directors—it should be governors and commissioners, that are not directors. Says his lordship, if you will not name them, I will name them for you, and lord Sandwich appointed seven persons, all of whom are directors, and without making any observations, I will repeat to your lordship who they are, and their situation. The first person is sir Meyrick Burrell, of whom I shall say nothing, but that he attended only once, and I verily believe he was heartily ashamed of what was going forward, and therefore did not attend any more. The next upon the list is Mr. Peregrine Cust, who attended all the meetings, except the last; and his absence captain Baillie had reason to regret, for in the course of the sittings of the committee, when Mr. Baillie complained, and with truth, that his witnesses were not heard, and he not permitted to prove the several charges in his book, he was interrupted, insulted, and abused by several of the parties, particularly by Mr. Mylne; he was called a blackguard and a liar by the reverend Mr. Cooke—Mr. Cust said, Be patient, captain Baillie, I promise you, before this business closes, it will take a great deal of time, yourself and all your witnesses shall be fairly

heard; on this account, his absence Mr. Baillie had great reason to regret: but towards the close of the business, on the last day, there attended one captain Barker in his room, and this captain Barker was extremely angry with Mr. Baillie for taking upon him to doubt, in any instance, of the propriety of the conduct of the directors; and whenever Mr. Baillie interfered, and desired to be heard to prove his allegations, the general answer of Mr. Barker was this, Why, Sir, what do you mean, by charging such people as the directors? Their having done a thing, is proof enough they have done right and proper, and there is no ground to impeach the conduct of such gentlemen as they are, and I will not suffer it: and Mr. Barker was as good as his word, for notwithstanding the promise Mr. Cust made, to hear captain Baillie, he found all of a sudden the business closed, and Mr. Baillie was turned out, and told, the court would sit but one day more, and that only for the purpose of making a report to the Admiralty, which report captain Baillie never has seen nor knows, but by the effect of it. It seems he has been suspended for some months from his office, his pay and emoluments stopt *pendente lite*. This circumstance alone, my lord, would most undoubtedly, if I was not to apply for costs, render me inexcusable.

Court. Have any of you got the report and order for his suspension?

Mr. Hargrave. The copy of the report was desired by Mr. Baillie, but it was refused.

Mr. Bearcroft. My lord, it is material to state that this captain Barker was a captain of a collier, the other persons that attended are, a Mr. Savary, storekeeper of the ordnance at Gibraltar: a Mr. Wells, a great ship-builder, and contractor for the Admiralty; a Mr. W. James, now sir Wm. James, a contractor for shipping: and a Mr. Charles Reynolds, formerly a master of a merchantman. This, my lord, was the nomination of the court of enquiry, and according to what is set forth of their proceedings by the affidavit of captain Baillie and Mr. Cowley, it was a mockery of every idea of justice: a farce and a burlesque of justice, and really deserves great censure. I cannot help taking notice of captain Baillie's complaint, for, I think, he has great ground to complain. That upon this occasion, when he was called upon, though not permitted to prove the truth of the charges in his book, he was confronted with a counsellor and solicitor, whom, he says, came to collect materials, not for the public good; but to give a colour to the complaints of individuals, in order to bring him before the court of King's-bench; and though Mr. Baillie is a very brave man, and not afraid of a French captain, your lordship will find he was exceedingly intimidated, indeed, at the sight of my worthy friend, Mr. Morgan: for he found that Mr. Morgan was not only a counsellor, but that sort of a

counsellor, called a special pleader!—and reported to be a gentleman of great eminence in that profession; and I may venture to say, a great number of persons do entertain strange opinions of special pleaders, and take them for very uncommon geniuses. And I dare say, when captain Baillie found himself opposed by a person so extraordinary, his fears met him; for Mr. Morgan contrived to prevent his going into any one part of his case—One minute he was told, 'Sir, you are not to prove this by such evidence—then, you shall not prove that—they are my clients, and shall not be permitted to accuse themselves.' At which Baillie was totally astonished, and his proofs put an end to.

This is in general the nature of the proceedings of this committee of enquiry—I dare say, I have omitted a great number of things which appeared upon their proceedings. Upon the whole, my lord, I contend this is not a libel; that captain Baillie, in printing this Case, has done no more than his duty, and that duty, as I conceive, with decency, and there is not the least foundation for this application.

But, my lord, in consequence of the rule being granted for captain Baillie to shew cause, they have made an affidavit, giving their reason why they did not apply sooner to the court; they say, they thought it was not proper to make the application, because there was a committee of enquiry, to call upon Mr. Baillie to prove, if he could, the several charges contained in his book. My lord, it is singular, that when these gentlemen themselves are speaking of this court of enquiry, they will not venture to say a word of its nature or proceedings; they dare not, I will venture to say, not one of them dared; they were very wisely advised to abstain from doing it—they will not dare to swear it was in truth a fair enquiry into the charges, and that Mr. Baillie was called upon and heard to prove his charges.

Upon all the circumstances of this case, can there be a doubt this rule will be discharged? I am very earnest in hoping it will be discharged with costs; if not, the complainants will have succeeded in the only object of their application. I have no conception, your lordship will make the rule absolute; for if half a dozen are to join their own purses, and the purse of the Hospital is to be joined with them, in this case they cannot but prevail in this prosecution, to the entire ruin of captain Baillie; their affidavits requiring such answers, as made the business spread out to a most enormous size: captain Baillie is therefore obliged to give answers to particular charges, unnecessary as they are, and it has not cost him less than three or four hundred pounds upon this occasion.

I conceive, therefore, the court will, for the obvious reasons I have already stated, be of opinion, this rule ought to be discharged, and discharged with costs.

I should have taken up a great deal more time, in proportion to what I have done, if I had stated all the particulars of the affidavits. This is the general outline of the case; and when our affidavits are read, I dare say your lordships will find the case much stronger than I have stated it; and, I trust, your lordship will, as justice cannot be done without it, discharge the rule with costs,

Court. How is the court appointed that made this enquiry; I see it is a court of governors?

Mr. Murphy. It was appointed by lord Sandwich, and they are all directors as well as governors.

Court. I want to know under what authority it was, the committee was appointed?

Mr. Bearcroft. It was under the authority of a general court of governors, which I should have stated.

Court. It was not any omission.

Mr. Bearcroft. It consisted of about seventeen governors, out of that number twelve or fourteen of them were directors, and of those very directors, the court of enquiry was named by lord Sandwich himself.

The Affidavit of Thomas Baillie, esq. lieutenant governor of Greenwich Hospital, was read, which being very long, is here omitted.

Court. I see the tendency of your other affidavits; by this they are of the same tendency with what he says.

Mr. Murphy. My lord, they are all very material.

Lord Mansfield. They can be read, when you have stated them, and shewn the materiality of them: I shall know better how to attend to them, when I see the use you make of them.

Mr. Hargrave. I am not sufficiently acquainted with the nature of the case, to take it from what has been read, without hearing the affidavits read.

Lord Mansfield. I take it from the defendant's affidavit, that the others join with him in verifying the facts, and Cowley concurring with him, as to the behaviour of the committee of enquiry; and when it comes to be more material, to be precise and exact, they will be read; I shall take it, from Mr. Murphy's opening *de bene esse*, we may stay till the last day of the term, if we are to read them all.

Mr. Peckham:

May it please your lordships to favour me in behalf of this much-injured gentleman, captain Baillie, who, after forty years service with honour to himself, and glory to his country, is dragged into this court to answer as a criminal, though guilty of no other crime than—that which, in the opinion of the directors of Greenwich Hospital, is of the most enormous magnitude; the crime of an honest and conscientious discharge of his duty.

Had captain Baillie slept in his office; had he been inattentive to the duties of his station; nay, had he been guilty of speculation, and joined in the general plunder, he would not have been brought before your lordships this day as a delinquent; but probably would have been the confidential friend of the first lord of the Admiralty, and might even have supplanted the reverend Mr. Cooke in his favour.

It was his duty to endeavour, to the utmost of his power, to remedy those abuses which called aloud for redress. It is for the faithful discharge of that duty, he is now harrassed with this prosecution, in the vain and idle hope, that in his ruin will be buried that censure and punishment, which they must be conscious their conduct and their crimes most justly deserve.

My lord, the intention of the establishment of Greenwich Hospital was for seamen—that is the institution. The charter says, "All the officers to be appointed in and for the said Hospital shall be seamen only."—The words are precise and positive, and can be neither explained away nor contradicted.

By the original instrument by which the Hospital was established, the commissioners, governors, and directors, are all to be men of rank, fortune, and ability; 24 directors are named by the charter, and appointed by the Admiralty, for the external government, so far as it relates to the expenditure of money, the making of contracts for provisions, and other necessities; and a council of naval officers is or ought to be appointed by the Admiralty, for the internal government of the house, under the name of "Governor and Council."—My client, captain Baillie, as lieutenant governor, is by the charter a member of the general court of commissioners and governors, and also a director; he is likewise a member of the council; and in the absence of the governor, is chairman of the two last boards, and commanding officer in the Hospital.

He was therefore impelled, by every tie of duty, to remedy the abuses he had complained of. Added to this, there are three letters, stated in his printed Case—orders, I may call them—from two different governors, expressly charging him to keep a watchful eye upon the pen-and-ink men, as the governors thought proper to call them.

Captain Baillie perceiving, in every department of the Hospital, most shameful plunder and speculation—finding landmen introduced, in express violation of the charter—the provisions intolerable—the men's clothes scantily provided, and upwards of 30,000*l.* expended in 8 years in useless alterations, thought he should not do his duty by himself, by the seamen, and his country, if he did not make those complaints, which as an honest man he was bound to do, and for which every individual owes him thanks and reverence.

The Hospital being in this situation, the

lieutenant governor applied, according to the rules of the house, first to the council: they apply to the directors, and afterwards to the governor, who pay no attention to his complaints: he then applies to the first lord of the Admiralty, but without effect: and at last he presents to him the printed Case, to which he desires an answer; but after many days were elapsed, he is told, "No answer would be given."

He then applies to the lords of the Admiralty, through the medium of the secretary, with a respectful letter, and his printed Case enclosed—that met with as ill fate as his former application; and captain Baillie then, and not till then, applied to the commissioners and governors, as the dernier resort, to remedy those evils.

If the intermediate officers refused to address the Admiralty, or general court, captain Baillie was willing to give as little offence as possible in doing it himself; for he printed the Case of Greenwich Hospital with the utmost caution: and he tells you the reason of printing it was, there were such a number of commissioners and governors, to whom it was necessary to communicate the facts he had stated, that it would have been impossible to have done it in manuscript; therefore, as the easiest and best method, he had it printed—but, solely with a view that the governors should read and digest it, in order that the truth of the several facts therein stated might be investigated.

Soon after this publication, as it has been called, had been thus delivered, it became necessary something should be done; and therefore a mock tribunal was instituted, which they thought proper to call a court of enquiry—a court in itself illegal, because improperly constituted: and, therefore, whatever was done in it is nothing to the present purpose; for though a general court was called, it was thought expedient to delegate the enquiry to a committee of seven, which seven are directors.

If there had been any gross misbehaviour in the Hospital, and no redress could be obtained, the commissioners and governors at large ought to have selected a number of governors of independent fortune and situation, who were not directors. Men of that description would have probed the business to the bottom; but, instead of those, they were a packed council for the occasion; and the court of enquiry consisted of the very delinquents themselves.

Your lordships will be astonished to hear that the committee sat in judgment upon their own crimes, and that those gentlemen were appointed by the first lord of the Admiralty. You find, with an adroitness peculiar to himself, he selected a set of men devoted to him; obligated to him for the very bread they eat, and which, in part, arises out of a fund appropriated for the use of disabled seamen, and to which the seamen themselves contribute.

How do they proceed? Captain Baillie's witnesses are refused to be heard—he applies to the books, that he may have evidence from those unerring vouchers—the books are refused to be opened—he was browbeat by their counsel, and insulted by their civil officers, a set of landmen, in a manner that a gentleman must blush to hear of; Mylne, the clerk of the works, calling him a blackguard, while Cooke, the chaplain, brands him as a liar. That a clergyman should be so lost to all sense of decency, as to forget that decorum which more peculiarly belongs to his situation, makes me blush for the profession of which he is so unworthy a member; but, that a man of low birth, and no education, should talk a language familiar to himself, I neither reprobate nor am surprised at; yet the directors that sat in the court of enquiry, ought not to have permitted a brave, honest, old seaman to have been treated in that shameless way, by men who, from profession or situation, were shielded from his resentment.

After the committee had sat some days, Mr. Cust, their chairman, who appeared ashamed of their conduct and their cause, withdrew himself from the committee; and Mr. Barker, a captain of a collier, was called to the chair; a proper instrument for the intended purpose: that man was mean as well as weak enough to say, that he was employed by lord Sandwich, and was to be paid for his labour: the labourer proved himself worthy of his hire; for, in a few minutes, there was an end of the committee, this honourable man asserting, that evidence was immaterial; that it was libellous to doubt the integrity of the directors; that he, therefore, should close the business, without hearing those witnesses of captain Baillie, which Mr. Cust had promised should be heard.

Your lordships will observe, the reason this court was not sooner applied to, in the language of the prosecutor's affidavits, was, "We could not apply before," because the court of enquiry was not finished: yet there is not a man upon that court of enquiry who dares to say, the facts charged are disproved, or that any one of the delinquents was not guilty of the crimes imputed to him. It would not perhaps be difficult to guess at the real reason; but it is foreign to the present purpose. Perhaps a greater man than any of these found himself attacked in another place, where, conscious of the truth of captain Baillie's charges, and of the impossibility of vindicating himself, he thought it would be prudent to avoid the enquiry, by asserting, that it was to undergo a discussion in Westminster-hall. That apology might silence the peers; and he then, to save his credit, might order his minions to prefer this prosecution, not with the hope of success, but to save him from the enquiry he had so much reason to dread. Soon after this manoeuvre had succeeded, and your lordships had been

applied to for informations, Mr. Hicks, the sixpenny receiver, who was one of the persons charged by captain Baillie, who is one of his prosecutors, and who sat in judgment upon him at a general court, where lord Sandwich presided; at that court, Mr. Hicks proposed, that captain Baillie should be removed from his employment of lieutenant-governor. The noble lord forgot, for a moment, the dignity of his station; and, more like a drunken chairman in a night-cellar than a peer of parliament, bawls out, "All you that are of that opinion, hold up your hands." They all joined in full chorus for suspension; and every dirty hand was immediately exalted; so that, in five minutes, this brave old officer was tried, condemned, and executed.

My lords, this sentence is to captain Baillie a very serious business; for it robs him of 600*l.* a-year; and if his wife should become a widow, she loses her pension of 100*l.* per ann. more: and he now stands before you, after being worn out in long and faithful services—an honest man indeed, but without a shilling in his pocket!

My lord, it will be necessary to ask your lordship, whether, taking the whole of this Case together—printed for the express purpose of giving information to those who wanted it, in obedience to the duty he owed himself and the public—can this be called a libel? Is it a libel for a man to do his duty? Is it a libel, for a man to complain to those who have alone the power to redress the grievance?

If this is to be called a libel, I doubt not but the time will come, when a grand jury will have informations filed against them, as libellers, for the presentments they have been bound in duty to prefer.

I know but of one case in point; which is the case of the convicted highwayman, who threatened to swear the peace against his jury, for having put him in fear of his life. Having thus considered the Case, as taken together, not to be a libel, let us state the particular parts of it, and see whether any thing can be collected that is libellous. I will not go through a tedious detail of what has been already spoken to; but will mention some particulars, if there is light sufficient to let me refer to my brief. With respect to the joint affidavit of the three directors, the charge is, "The directors never presume to exercise their own judgment, but give their votes agreeable to the directions they receive"—"Thereby insinuating"—observe the insinuations! that the directors were guilty of fraud! and did not vote according to their conscience!

Is that insinuation justified by the charge? Does it necessarily follow, that men, who do not exercise their judgment, must act contrary to their conscience, or that they are guilty of fraud, because they obey the directions of another? Are the mandates of lord Sandwich so wicked, that obedience to them

becomes criminal? These wretched affidavits-men appear to me to be the libellers; not the defendant, who has written the truth.

There is another charge which they have disingenuously construed, but dare not deny; and have taken only a piece of the paragraph, "That (meaning the government of the Hospital) which has been eventually formed, is rather a burlesque upon authority, as nothing can be more absurd than to appoint persons, with all the grave solemnity of real business, to examine into and controul their own conduct; to check and point out objections to their own accounts," meaning thereby (as they swear in their affidavits) that those directors who have accounts to settle, are guilty of fraud, and negligence: does that follow? Certainly not. But the impropriety of such appointments is glaring; and the first part of the sentence, which they have thought proper to lop off, expresses it, "Thus, instead of a government of that perfect kind, which might naturally be expected from the anxious care which breathes through every line of the original instruments by which it is established, that which has been eventually formed is rather a burlesque upon authority, &c. &c."

Now your lordship sees how the sentence is mutilated, and what false conclusions they have drawn from those premises. There are a great variety of similar instances in their affidavits, even to bits of sentences and half-lines. I wish to read, and to observe upon some of them; but it is impossible for me to see by this light, and I cannot recollect them with sufficient accuracy, to state them with necessary precision; therefore I shall content myself with a few observations to your lordship upon the whole purport of what the prosecutors say, "So far as the charge tends to criminate me, I deny it." That is the manner some charges are treated in—that is the form—they swear, this or that is not true; or, it don't tend to criminate me. With what face then do the gentlemen come here to make the application.

If it does not criminate, why do they make such application? If it does criminate them, they ought to be indicted for perjury; for all the charges are substantiated beyond a possibility of doubt—not only by the affidavit of captain Baillie, but the concurring testimony of at least thirty others.

For example—the facts, with respect to the butcher, cannot be denied. The charge is, that he who has been convicted, is again employed. Then say they "This charge, so far as it criminales me, is not true." The truth of the fact cannot be controverted—then it does not tend to criminate me—If it does not, for what purpose do they come here?—I take upon me to say, upon my veracity, that every charge is answered in the way I have now mentioned; or else they draw their conclusion, and say, This I deny!—For instance—they state a charge—from that charge, they draw a perverse and false conclusion—and

then they say (hoping to impose upon the court) "This we deny," referring to their own conclusion, which is the antecedent, that they know to be false, and take no notice of the charge which stands uncontradicted.

I trust these few observations are complete answers to every part of their affidavits: I take upon me to say, there is not a fact in the book, but what is positively proved. There is not a fact, which they have attempted to deny. I should therefore insult the court, if I could suppose the rule would not be discharged with costs.

My lord, I have ever understood when gentlemen come into this court upon groundless applications, though much more favourably circumstanced than the present, that this court will give costs to the adverse party; for it would be extremely hard indeed for an innocent man to be dragged here to answer, at a great expence, a crime which had no existence but in the malice of his prosecutors.

Costs have been granted in informations against justices of the peace, in informations in the nature of a Quo Warranto; and though those informations differ from the present application, yet the amercing the prosecutor in costs is founded on the same immutable law of justice, that the innocent should not be harrassed without recompence, and that the wrong doer should defray the expence he had occasioned.

Who is at the expence of this prosecution? I see many of the prosecutors here: will they say it comes out of their own pockets? I see the solicitor of Greenwich Hospital here, attending as their attorney: he likewise is silent. Then I am justified in saying the prosecutors are not to pay—let them deny it if they dare!

Is it possible, my lord, that these men's expences shall be defrayed out of the treasury of Greenwich Hospital, appropriated to the most praise-worthy purposes, while this unhappy gentleman is to be ruined by paying his own costs, though he prevails against his prosecutors, who cannot, who dare not, deny the charges?

There is a technical expression used in the law, "that every man should come into this court with clean hands." Which of the prosecutors can claim the benefit of the expression?

Is Mr. Hicks, the sixpenny receiver, in that predicament? But enough has been already said of him, to convince your lordship that he does not come with clean hands.

In what light does Mr. Ibbetson appear?—A mere clerk in office, who lifts his hand against a lieutenant of the Hospital, and strikes a cripple who was without defence. This is not the only instance of his cruelty; for a poor helpless old pensioner stands in judgment against him, whom he beat unmercifully while bleeding at his feet! Are these the clean hands which come for informations, thus stained with the blood of the old,

the impotent and infirm! But let us look at the reverend Mr. Cooke, that worthy leader of these disgraceful scenes, that negotiator of every thing that is infamous. I am not to be deterred from my duty, but will speak of men as they are; though I should be ashamed to use such language, if I could not justify every word I shall say of that abandoned man.

It is proved, beyond a possibility of doubt, that this man, who is a director of a great establishment, who ought to have been the first to prosecute the contracting butcher, for his numberless frauds on the poor pensioners, was the man, that was shameless enough to apply to different persons, begging them to suppress their evidence against that delinquent. Can there be a more atrocious act than to suborn witnesses in favour of that defendant, which, as a director and a plaintiff in the cause, he was bound to bring to justice?

The rev. Mr. Cooke has been guilty of another act, which cries aloud for vengeance. He told different gentlemen, who were officers in the Hospital—

"If you are seen with captain Baillie, lord Sandwich will stop your preferment for it; and, if he applies to parliament, will expel him the Hospital:" and, lest his words should not gain credit, he stamp'd it with the sanction of an oath, saying, 'By God it is true!'

This is the man who is called the confidential director of lord Sandwich. I vow to God I am ashamed to hear it. Sure it must be impossible that a noble lord should so far forget the dignity of his station, as to be connected with such a man, or to descend to such unexampled meanness, as to prevent gentlemen from holding communication with captain Baillie, or threaten him with ruin, for persevering in his duty.

I will not believe it of the noble lord; Mr. Cooke must have held this language without authority; and I trust in future he will not enjoy, since he can no longer deserve, the attention of lord Sandwich as a confidential friend.

Mr. Mylne, the clerk of the works, thought proper to call the lieutenant-governor a blackguard, and dared to strike one of the king's lieutenants during the sitting of the committee. A man born with a trowel in his hand, a bricklayer, struck a gentleman for giving evidence in the court of enquiry! Yet these are the men that apply to your lordship, and beg you will not discharge the rule; but grant an information against captain Baillie.

These are the men, my lord, that have acted, I am not ashamed to say, with equal infamy and meanness. If ever men ought to be amerced in costs for bringing an ill grounded prosecution, they are now before the court.

My lord, it is so dark, it is impossible for me to recur to my notes, to state many things which ought to be stated; notwithstanding, I hope, from what has been already said by

the gentlemen who have spoken, and from the few observations I have been able to make, that your lordships will feel, that this rule ought to be discharged with costs.

[Court adjourned till the next day.]

November 24.

The Hon. Thomas Erskine:

My lord;* I am likewise of counsel for the author of this supposed libel: and if the matter for consideration had been merely a question of private wrong, in which the interests of society were no farther concerned, than in the protection of the innocent, I should have thought myself well justified, after the very able defence made by the learned gentlemen who have spoken before me, in sparing your lordship, already fatigued with the subject, and in leaving my client to the prosecutor's counsel and the judgment of the Court.

But upon an occasion of this serious and dangerous complexion, when a British subject is brought before a court of justice only for having ventured to attack abuses, which owe their continuance to the danger of attacking them; when, without any motives but benevolence, justice, and public spirit, he has ventured to attack them though supported by power, and in that department too, where it was the duty of his office to detect and expose them; I cannot relinquish the high privilege of defending such a character; I will not give up even my small share of the honour of repelling and of exposing so odious a prosecution.

No man, my lord, respects more than I do the authority of the laws, and I trust I shall not let fall a single word to weaken the ground I mean to tread, by advancing propositions, which shall oppose or even evade the strictest rules laid down by the Court in questions of this nature.

Indeed, it would be as unnecessary as it would be indecent; it will be sufficient for me to call your lordship's attention to the marked and striking difference between the writing before you, and I may venture to say almost every other, that has been the subject of argument on a rule for a criminal information.

The writings or publications, which have been brought before this Court, or before

grand juries, as libels on individuals, have been attacks on the characters of private men, by writers stimulated sometimes by resentment, sometimes, perhaps, by a mistaken zeal; or they have been severe and unfounded strictures on the *characters* of public men, proceeding from officious persons taking upon themselves the censorial office, without temperance or due information, and without any call of duty to examine into the particular department, of which they choose to become the voluntary guardians: a guardianship which they generally content themselves with holding in a newspaper for two or three posts, and then, with a generosity which shines on all mankind alike, correct every department of the state, and find at the end of their lucubrations, that they themselves are the only honest men in the community. When writers of this description suffer, however we may be occasionally sorry for their misdirected zeal, it is impossible to argue against the law that censures them.

But I beseech your lordship to compare these men and their works, with my client, and the publication before the Court.

Who is he? What is his duty? What has he written? To whom has he written? And what motive induced him to write?

He is lieutenant governor of the Royal Hospital of Greenwich, a palace built for the reception of aged and disabled men, who have maintained the empire of England on the seas, and into the offices and emoluments of which, by the express words of the charter, as well as by the evident spirit of the institution, no landmen are to be admitted.

HIS DUTY—in the treble capacity of lieutenant governor, director, and a general governor, is, in conjunction with others, to watch over the internal economy of this sacred charity, to see that the setting days of these brave and godlike men are spent in comfort and peace, and that the ample revenues, appropriated by this generous nation to their support, are not perverted and misapplied.

HE HAS WRITTEN, that this benevolent and politic institution has degenerated from the system established by its wise and munificent founders; that its governors consist indeed of a great number of illustrious names and reverend characters, but whose different labours and destinations in the most important offices of civil life rendered a deputation indispensably necessary for the ordinary government of the Hospital; that the difficulty of convening this splendid corporation had gradually brought the management of its affairs more particularly under the direction of the Admiralty; that a new charter has been surreptitiously obtained, in repugnance to the original institution, which enlarges and confirms that dependence; that the present first lord of the Admiralty (who for reasons sufficiently obvious, does not appear publicly in this prosecution) has, to serve the base and

* In the Introduction to this speech in the recently published Collection of Lord Erskine's Speeches, it is stated, "Mr. Erskine spoke from the back row of the court, we believe for the first time, as he had only been called to the bar on the last day of the term preceding." The most able and eloquent reviewer of that publication truly observes, that by this speech Mr. Erskine, in the very outset of his brilliant career, astonished the legal world by a display of talent which has indeed been outshone, but by no means obscured even by his own riper efforts. See *Edinburgh Review*, vol. 16, p. 103. I am informed that the expressions of delight and admiration, which this Speech excited in Westminster-hall, have never been paralleled there.

worthless purposes of corruption, introduced his prostituted freeholders of Huntingdon into places destined for the honest freeholders of the seas ; that these men (among whom are the prosecutors) are not only landmen, in defiance of the charter, and wholly dependent on the Admiralty in their views and situations, but, to the reproach of all order and government, are suffered to act as directors and officers of Greenwich, while *they themselves* hold the very subordinate offices, the control of which is the object of that direction ; and inferring from thence (as a general proposition) that men in such situations cannot, as human nature is constituted, act with that freedom and singleness which their duty requires, he justly attributes to these causes the grievances which his gallant brethren actually suffer, and which are the generous subject of his complaint.

He has written this, my lord, not to the public at large, which has no jurisdiction to reform the abuses he complains of, but to those only whose express duty it is to hear and to correct them, and I trust they will be solemnly heard and corrected. He has not PUBLISHED, but only distributed his book among the governors, to produce inquiry and not to calumniate.

THE MOTIVE WHICH INDUCED HIM TO WRITE, and to which I shall by and by claim the more particular attention of the Court, was to produce reformation ; a reformation which it was his most pointed duty to attempt, which he has laboured with the most indefatigable zeal to accomplish, and against which every other channel was blocked up.

My lord, I will point to the proof of all this : I will show your lordship that it was his duty to investigate ; that the abuses he has investigated do really exist, and arise from the ascribed causes ; that he has presented them to a competent jurisdiction, and not to the public ; and that he was under the indispensable necessity of taking the step he has done to save Greenwich Hospital from ruin.

Your lordship will observe, by this sub-division, that I do not wish to form a specious desultory defence : because, feeling that every link of such sub-division will in the investigation produce both law and fact in my favour, I have spread the subject open before the eye of the Court, and invite the strictest scrutiny. Your lordship will likewise observe by this arrangement, that I mean to confine myself to the *general* lines of his defence : the various affidavits have already been so ably and judiciously commented on by my learned leaders, to whom I am sure captain Baillie must ever feel himself under the highest obligations, that my duty has become narrowed to the province of throwing his defence within the closest compass, that it may leave a distinct and decided impression.

And first, as to its being his particular

duty to enquire into the different matters which are the subject of his publication, and of the prosecutors' complaint : I believe, my lords, I need say little on this head to convince your lordships, who are yourselves governors of Greenwich Hospital, that the defendant, in the double capacity of lieutenant governor and director, is most indispensably bound to superintend every thing that can affect the prosperity of the institution, either in internal economy, or appropriation of revenue ; but I cannot help reading two copies of letters from the Admiralty in the year 1742 ; I read them from the publication, because their authenticity is sworn to by the defendant in his affidavit ; and I read them to show the sense of that board with regard to the right of enquiry and complaint in all officers of the Hospital, even in the departments not allotted to them by their commissions.

“ To Sir JOHN JENNINGS, Governor of Greenwich Hospital.

“ Admiralty-office, April 19, 1742.

“ Sir ; The directors of Greenwich Hospital having acquainted my lords commissioners of the Admiralty, upon complaint made to them, that the men have been defrauded of part of their just allowance of broth and pease-soup, by the smallness of the pewter-dishes, which in their opinion have been artificially beaten flat, and that there are other frauds and abuses attending this affair, to the prejudice of the poor men ; I am commanded by their lordships to desire you to call the officers together in council, and to let them know, that their lordships think them very blameable for suffering such abuses to be practised, which could not have been done without their extreme indolence in not looking into the affairs of the Hospital : that their own establishment in the Hospital is for the care and protection of the poor men, and that it is their duty to look daily into every thing, and to remedy every disorder ; and not to discharge themselves by throwing it upon the under officers and servants ; and that their lordships being determined to go to the bottom of this complaint, do charge them to find out and inform them at whose door the fraud ought to be laid, that their lordships may give such directions herein as they shall judge proper.—I am, Sir, your most obedient servant, THO. CORBET.”

“ Admiralty-office, May 7th, 1742.

“ Sir ; My lords commissioners of the Admiralty having referred to the directors of Greenwich Hospital the report made by yourself and officers of the said Hospital in council, dated the 23d past, relating to the flatness of the pewter dishes made use of to hold the broth and pease-pottage served out to the pensioners ; the said directors have returned hither a reply, a copy of which I am ordered to send you enclosed : they have herein set

forth a fact which has a very fraudulent appearance, and it imports little by what means the dishes became shallow; but if it be true, what they assert, that the dishes hold but little more than half the quantity they ought to do, the poor men must have been greatly injured; and the allegations in the officers' report, that the pensioners have made no complaint, does rather aggravate their conduct, in suffering the men's patience to be so long imposed upon.

"My lords commissioners of the Admiralty do command me to express myself in such a manner as may show their wrath and displeasure at such a proceeding. You will please to communicate this to the officers of the house in council.

"Their lordships do very well know that the directors have no power but in the management of the revenue and estates of the Hospital, and in carrying on the works of the building, nor did they assume any on this occasion; but their lordships shall always take well of them any informations, that tend to rectify any mistakes or omissions whatsoever, concerning the state of the Hospital.—I am, Sir, your most obedient servant,

"THO. CORBET."

"To Sir John Jennings, Governor of Greenwich Hospital."

From these passages it is plain, that the Admiralty *then* was sensible of the danger of abuses in so extensive an institution, that it encouraged complaints from all quarters, and instantly redressed them; for although corruption was not then *an infant*, yet the idea of making a job of Greenwich Hospital never entered her head; and indeed if it had, she could hardly have found at that time of day, a man with a heart callous enough to consent to such a scheme, or with forehead enough to carry it into public execution.

Secondly, my lord, that the abuses he has investigated do in truth exist, and arise from the ascribed causes.

And, at the word TRUTH, I must pause a little to consider, how far it is a defence on a rule of this kind, and what evidence of the falsehood of the supposed libel the Court expects from prosecutors, before, it will allow the information to be filed, even where no affidavits are produced by the defendant in his exculpation.

That a libel *upon an individual* is not the less so for being true, I do not, *under certain restrictions*, deny to be law; nor is it necessary for me to deny it, because this is not a complaint in THE ORDINARY COURSE OF LAW, but an application to the Court to exert an ECCENTRIC, EXTRAORDINARY, VOLUNTARY JURISDICTION, BEYOND THE ORDINARY COURSE OF JUSTICE;—a jurisdiction, which I am authorized from the best authority to say, this Court will not exercise, unless the prosecutors come PURE AND UNPOLLUTED; denying upon oath the truth of every word and

sentence which they complain of as injurious for although, in common cases, the matter may be not the less libellous, because true, yet the Court will not interfere by information, for guilty or even equivocal characters, but will leave them to its ordinary process. If the Court does not see palpable MALICE and FALSEHOOD on the part of the defendant, *and clear innocence on the part of the prosecutor*, it will not stir;—it will say, This may be a libel;—this may deserve punishment;—but go to a grand jury, or bring your actions: all men are equally entitled to the protection of the laws, but all men are not equally entitled to an extraordinary interposition and protection, beyond the common distributive forms of justice.

This is the true constitutional doctrine of informations, and made a strong impression upon me, when delivered by your lordship in this court; the occasion which produced it was of little consequence, but the principle was important. It was an information moved for by general Plasto against the printer of the Westminster Gazette, for a libel published in his paper, charging that gentleman, among other things, with having been tried at the Old Bailey for a felony. The prosecutor's affidavit denied the charges *generally* as foul, scandalous, and false; but did not traverse the aspersion I have just mentioned *as a substantive fact*; upon which your lordship told the counsel [Mr. Dunning], who was too learned to argue against the objection, that the affidavit was defective in that particular, and should be amended before the Court would even grant a rule to show cause: for although such GENERAL denial would be sufficient where the libellous matter consisted of scurrility, insinuation, and GENERAL abuse, which is no otherwise traversable than by innuendoes of the import of the scandal, and a denial of the truth of it, yet that when a libel consisted of DIRECT AND POSITIVE FACTS AS CHARGES, the Court required SUBSTANTIVE *traverses of such facts* in the affidavit, before it would interpose to take the matter from the cognizance of a grand jury.

This is the law of informations, and by this touchstone I will try the prosecutors' affidavits, to show that they will fall of themselves, even without that body of evidence, with which I can in a moment overwhelm them.

If the defendant be guilty of any crime at all, it is for writing THIS BOOK: and the conclusion of his guilt or innocence must consequently depend on the scope and design of it, the general truth of it, and the necessity for writing it; and this conclusion can no otherwise be drawn, than by taking the WHOLE of it together. Your lordships will not shut your eyes, as these prosecutors expect, to the *design* and *general truth* of the book, and go entirely upon the *insulated* passages, culled out, and set heads and points in their wretched affida-

vits, without context, or even an attempt to unriddle or explain their sense, or bearing on the subject; for, my lord, they have altogether omitted to traverse the scandalous facts themselves, and have only laid hold of those warm animadversions, which the recital of them naturally produced in the mind of an honest, zealous man, and which, besides, are in many places only conclusions drawn from facts as general propositions, and not aspersions on them as individuals. And where the facts do come home to them as charges, *not one of them is denied by the prosecutors.* I assert, my lord, that in the directors' whole affidavit (which I have read repeatedly, and with the greatest attention) *there is not any one fact mentioned by the defendant which is substantially denied;* and even when five or six strong and pointed charges are tacked to each other, to avoid meeting naked truth in the teeth, they are not even contradicted by the lump, but a general innuendo is pinned to them all;—a mere illusory averment, that the facts mean to criminate them, and that they are not criminal; BUT THE FACTS THEMSELVES REMAIN UNATTEMPTED AND UNTOUCHED.

Thus, my lord, after reciting in their affidavit the charge of their shameful misconduct, in renewing the contract with the Huntingdon butchers, who had just compounded the penalties incurred by the breach of a former contract, and in that breach of contract, the breach of every principle of humanity, as well as of honesty; and the charge of putting improper objects of charity into the Hospital, while the families of poor pensioners were excluded and starving;—and of screening delinquents from inquiry and punishment in a pointed and particular instance, and therefore traversable as a substantive fact; yet not only there is no such traverse, but, though all these matters are huddled together in a mass, there is not even a general denial; but one loose innuendo, that the facts in the publication are stated with an intention of criminating the prosecutors, and that, *as far as they tend to criminate them, they are false.*

Will this meet the doctrine laid down by your lordship in the case of general Plasto?—Who can tell what they mean by criminality?—Perhaps they think neglect of duty not criminal,—perhaps they think corrupt servility to a patron not criminal; and that if they do not actively promote abuses, the winking at them is not criminal. But I appeal to the Court, whether the directors' whole affidavit is not a cautious composition to avoid downright perjury, and yet a glaring absurdity on the face of it; for since the facts are not traversed, the Court must intend them to exist; and if they do exist, they cannot but be criminal. The very existence of such abuses, in itself criminate those, whose offices are to prevent them from existing. Under the shelter of such qualifications of

guilt, no man in trust could ever be criminated. But at all events, my lord, since they seem to think that the facts may exist without their criminality,—be it so: the defendant then does not wish to criminate them; he wishes only for effectual inquiry and information, that there may be no longer any crimes, and consequently no criminality. But he trusts, in the mean time, and I likewise trust, that, while these facts do exist, the Court will at least desire the prosecutors to clear themselves before the general council of governors, to whom the writing is addressed, and not before any packed committee of directors appointed by a noble lord, and then come back to the Court acquitted of all criminality, or, according to the technical phrase, with *clean hands*, for protection.

Such are the merits of the affidavits exhibited by the directors; and the affidavits of the other persons are, without distinction, subject to the same observations. They are made up either of general propositions, converted into charges by ridiculous innuendoes, or else of strings of distinct disjointed facts tied together, and explained by one general averment; and after all—the scandal, such as their arbitrary interpretation makes it, is still only denied with the old jesuitical qualification of criminality,—*the facts themselves remaining untraversed, and even untouched.*

They are, indeed, every way worthy of their authors;—of Mr. Godby, the good steward, who, notwithstanding the remonstrances of the captain of the week, received for the pensioners such food as would be rejected by the idle vagrant poor, and endeavoured to tamper with the cook to conceal it; and of Mr. Ibbetson, who converted their wards into apartments for himself, and the clerks of clerks, in the endless subordination of idleness;—a wretch who has dared, with brutal inhumanity, to strike those aged men, who in their youth would have blasted him with a look. As to Mr. Stuart and Mr. Mylne, though I think them reprehensible for joining in this prosecution, yet they are certainly respectable men, and not at all on a level with the rest, nor has the defendant so reduced them. These two therefore have in fact no cause of complaint, and Heaven knows, the others have no title to complain.

In this enumeration of delinquents, the Rev. Mr. Cooke looks round,* as if he thought I had forgotten him. He is mistaken;—I well remembered him: but his infamy is worn threadbare: Mr. Murphy has already treated him with that ridicule, which his folly, and Mr. Peckham with that invective, which his wickedness deserves.—I shall

* This passage is selected by the masterly Edinburgh Reviewer "with a view to show, that the courage which marked Lord Erskine's professional life was not acquired after the success which rendered it a safe and a cheap virtue; but, being naturally inherent in the man, was displayed at a moment when attended with the most formidable risks."

therefore forbear to taint the ear of the Court further with his name;—a name which would bring dishonour upon his country and its religion, if human nature were not happily compelled to bear the greater part of the disgrace, and to share it amongst mankind.

But these observations, my lord, are solely confined to the prosecutors' affidavits, and would, I think, be fatal to them, even if they stood uncontroverted. But what will the Court say, when *ours* are opposed to them, where the truth of every part is sworn to by the defendant?—What will the Court say to the collateral circumstances in support of them, where every material charge against the prosecutors is confirmed?—What will it say to the affidavit that has been made, that no man can come safely to support this injured officer?—that men have been deprived of their places, and exposed to beggary and ruin, merely for giving evidence of abuses, which have already by his exertions been proved before your lordship at Guildhall, whilst he himself has been suspended as a beacon for prudence to stand aloof from; so that in this unconstitutional mode of trial, where the law will not lend its process to bring in truth by *force*, he might stand unprotected by the *voluntary* oaths of the only persons who could witness for him*? His character has, indeed, in some measure, broke through all this malice: the love and veneration which his honest zeal has justly created, have enabled him to produce the proofs which are filed in court; but many have hung back, and one withdrew his affidavit, *avowedly* from the dread of persecution, even after it was sworn in court. Surely, my lord, this evidence of malice in the leading powers of the Hospital would alone be sufficient to destroy their testimony, even when swearing collaterally to facts, in which they were not themselves interested;—how much more when they come as *prosecutors*, stimulated by resentment, and with the hope of covering their patron's misdemeanours and their own, by turning the tables on the defendant, and prosecuting *him* criminally, to stifle all necessary inquiry into the subject of his complaints?

Lieutenant Gordon, the first lieutenant of the Hospital, and the oldest officer in the navy; lieutenant William Lefevre; lieutenant Charles Lefevre, his son; Alexander Moore; lieutenant William Ansell; and captain Allright, have all positively sworn, that a faction of landmen subsists in the Hospital, and that they do in their consciences believe, that the defendant drew upon himself the resentment of the prosecutors, from his activity in correcting this enormous abuse, and from

* On the trial of a cause, every person acquainted with any fact is bound, under pain of fine and imprisonment, to attend on a subpoena to give evidence before the court and jury; but there is no process to compel any man to make an affidavit before the court.—*Orig. Ed.*

his having restored the wards, that had been cruelly taken away from the poor old men; that on that just occasion the whole body of the pensioners surrounded the apartments of their governor, to testify their gratitude with acclamations, which sailors never bestow but on men who deserve them. This simple and honest tribute was the signal for all that has followed; the leader of these unfortunate people was turned out of office; and the affidavit of Charles Smith is filed in court, which, I thank my God, I have not been able to read without tears;—how, indeed, could any man, when he swears, that, for this cause alone, his place was taken from him;—that he received his dismissal when languishing with sickness in the infirmary, the consequence of which was, that his unfortunate wife, and several of his helpless, innocent children died in want and misery;—THE WOMAN ACTUALLY EXPIRING AT THE GATES OF THE HOSPITAL! That such wretches should escape chains and a dungeon, is a reproach to humanity, and to all order and government; but that they should become PROSECUTORS, is a degree of effrontery that would not be believed by any man, who did not accustom himself to observe the shameless scenes, which the monstrous age we live in is every day producing.

I come now, my lord, to consider to WHOM HE HAS WRITTEN.—This book is not PUBLISHED.—It was not printed for sale, but for the more commodious distribution among the many persons who are called upon in *duty* to examine into its contents. If the defendant had written it to calumniate, he would have thrown it abroad among the multitude: but he swears he wrote it for the attainment of reformation, and therefore confined its circulation to the proper channel, till he saw it was received as a libel, and then he even discontinued that distribution, and only shewed it to his counsel to consider of a defence;—and no better defence can be made, than that the publication was so *limited*.

My lord, a man cannot be guilty of a libel, who presents grievances before a *competent* jurisdiction, although the facts he presents should be false; he may indeed be indicted for a malicious prosecution, and even there a probable cause would protect him, but he can by no construction be considered as a libeller.

The case of Lake and King, in 1st Levinz, 240, but which is better reported in 1st Saunders, is directly in point; it was an action for printing a petition to the members of a committee of parliament, charging the plaintiff with gross fraud in the execution of his office; I am aware that it was an action on the case, and not a criminal prosecution; but I am prepared to shew your lordship, that the precedent on that account makes the stronger for us. The truth of the matter, though part of the plea, was not the point in

contest; the justification was the presenting it to a proper jurisdiction, and printing it, as in this case, for more commodious distribution; and it was first of all resolved by the court, that the delivery of the petition to all the members of the committee was justifiable;—and that it was no libel, *whether the matter contained were true or false*, it being an appeal in a course of justice, and because the parties, to whom it was addressed, had jurisdiction to determine the matter: that the intention of the law in prohibiting libels was to restrain men from making themselves their own judges, instead of referring the matter to those, whom the constitution had appointed to determine it;—and that to adjudge such reference to be a libel, would discourage men from making their inquiries with that freedom and readiness, which the law allows, and which the good of society requires. But it was objected, he could not justify the *PRINTING*; for, by that means, it was published to printers and composers; but it was answered, and resolved by the whole court, that the printing, *with intent to distribute them among the members of the committee*, was legal; and that the making many copies by clerks, would have made the matter more public. I said, my lord, that this being an action on the case, and not an indictment or information, made the stronger for us: and I said so, because the action on the case is to redress the party in damages, for the injury he has sustained as an individual, and which he has a right to recover, unless the defendant can shew that the matter is true, or, as in this case, whether true or false, that it is an appeal to justice.—Now, my lord, if a defendant's right to appeal to justice, could, in the case of *Lake and King*, repel a plaintiff's right to damages, although he was actually damaged by the appeal, how much more must it repel a criminal prosecution, which can be undertaken only for the sake of public justice, when the law says, it is for the benefit of public justice to make such appeal? And *that* case went to protect even falsehood, and where the defendant was not particularly called upon in duty as an individual to answer:—how much more shall it protect us, who were bound to enquire, who have written nothing but truth, and who have addressed what we have written to a competent jurisdiction?

I come lastly, my lord, to THE MOTIVES WHICH INDUCED HIM TO WRITE.

The government of Greenwich Hospital is divided into three departments: the council; the directors; and the general governors: the defendant is a member of every one of these, and therefore his duty is universal. The COUNCIL consists of the officers, whose duty it is to regulate the internal economy and discipline of the house, the Hospital being as it were a large man of war, and the council its commanders; and therefore, these men, even by the present mutilated charter,

ought all to be seamen. Secondly, the directors, whose duty is merely to concern themselves with the appropriation of the revenue, in contracting for and superintending supplies, and in keeping up the structure of the Hospital; and lastly, the general court of governors, consisting of almost every man in the kingdom with a sounding name of office: a mere nullity, on the members of which no blame of neglect can possibly be laid; for the Hospital might as well have been placed under the tuition of the fixed stars, as under so many illustrious persons, in different and distant departments. From the council, therefore, appeals and complaints formerly lay at the Admiralty, the directors having quite a separate duty; and, as I have shown the Court, the Admiralty encouraged complaints of abuses, and redressed them. But since the administration of the present first lord, the face of things has changed. I trust it will be observed, that I do not go out of the affidavit to seek to calumniate: my respect for the COURT would prevent me, though my respect for the said first lord might not. But the very foundation of my client's defence depending on this matter, I must take the liberty to point it out to the Court.

The Admiralty having placed several landmen in the offices that form the council, a majority is often artificially secured there; and when abuses are too flagrant to be passed over in the face of day, they carry their appeal to the directors, instead of the Admiralty, where, from the very nature of man, in a much more perfect state than the prosecutors, they are sure to be rejected or slurred over; because these acting directors themselves are not only under the same influence with the complainants, but the subjects of the appeals are most frequently the fruits of their own active delinquencies, or at least the consequence of their own neglects. By this manœuvre the Admiralty is secured from hearing complaints, and the first lord, when any comes as formerly from an individual, answers with a perfect composure of muscle, that it is *coram non judice*; it does not come through the directors. The defendant positively swears this to be true; he declares that, in the course of these meetings of the council, and of appeals to the directors, he has been not only uniformly over-ruled, but insulted as governor in the execution of his duty; and the truth of the abuses which have been the subject of these appeals, as well as the insults I have mentioned, are proved by whole volumes of affidavits filed in court, notwithstanding the numbers who have been deterred by persecution from standing forth as witnesses.

The defendant also himself solemnly swears this to be true. He swears, that his heart was big with the distresses of his brave brethren, and that his conscience called on him to give them vent; that he often complained; that he repeatedly wrote to, and waited on lord Sand-

wich, without any effect, or prospect of effect; and that at last, wearied with fruitless exertions, and disgusted with the insolence of corruption in the Hospital, which hates him for his honesty, he applied to be sent, with all his wounds and infirmities, upon actual service again. The answer he received is worthy of observation; the first lord told him, in derision, that it would be the same thing every where else; that he would see the same abuses in a ship; and I do in my conscience believe he spoke the truth, *as far as depended on himself.*

What then was the defendant to do in the treble capacity of lieutenant governor, of director, and of general governor of the Hospital? My lord, there was no alternative but to prepare, as he did, the statement of the abuses for the other governors, or to sit silent, and let them continue. Had he chosen *the last*, he might have been caressed by the prosecutors, and still have continued the first inhabitant of a palace, with an easy independent fortune. But he preferred the dictates of honour, and fulfilled them at the expence of being discarded, after forty years gallant service, covered with wounds, and verging to old age. Yet he respected the laws while he fulfilled his duty; his object was reformation, not reproach: he preferred a complaint, and stimulated a regular inquiry, but suspended the punishment of public shame till the guilt should be made manifest by a trial. He did not therefore *publish*, as their affidavits falsely assert, but only preferred a complaint *by distribution of copies to the governors*, which I have shown the Court, by the authority of a solemn legal decision, is NOT A LIBEL.

Such my lords, is the case. The defendant, not a disappointed malicious informer, prying into official abuses, because without office himself, but himself a man in office; not troublesomely inquisitive into other men's departments, but conscientiously correcting his own; doing it pursuant to the rules of law, and, what heightens the character, doing it at the risk of his office, from which the effrontery of power has already suspended him without proof of his guilt; a conduct not only unjust and illiberal, but highly disrespectful to this Court, whose judges sit in the double capacity of ministers of the law, and governors of this sacred and abused institution. Indeed, lord Sandwich has, in my mind, acted such a part * * * *

[Here, Lord Mansfield, observing the Counsel heated with his subject, and growing personal on the First Lord of the Admiralty, told him, that Lord Sandwich was not before the Court.]

I know, that he is not formally before the Court, but, for that very reason, *I will bring him before the Court*: he has placed these men in the front of the battle, in hopes to escape under their shelter, but I will not join in battle with them; *their vices*, though screwed

up to the highest pitch of human depravity, are not of dignity enough to vindicate the combat with *me*. I will drag *him* to light, who is the dark mover behind this scene of iniquity. I assert, that the earl of Sandwich has but one road to escape out of this business without pollution and disgrace: and *that is*, by publicly disavowing the acts of the prosecutors, and restoring captain Baillie to his command. If he does this, then his offence will be no more than the too common one of having suffered his own *personal* interest to prevail over his *public* duty, in placing his voters in the Hospital. But if, on the contrary, he continues to protect the prosecutors, in spite of the evidence of their guilt, which has excited the abhorrence of the numerous audience that crowd this Court; IF HE KEEPS THIS INJURED MAN SUSPENDED, OR DARES TO TURN THAT SUSPENSION INTO A REMOVAL, I SHALL THEN NOT SCRUPLE TO DECLARE HIM AN ACCOMPLICE IN THEIR GUILT, A SHAMELESS OPPRESSOR, A DISGRACE TO HIS RANK, AND A TRAITOR TO HIS TRUST. But, as I should be very sorry that the fortune of my brave and honourable friend should depend either upon the exercise of lord Sandwich's virtues, or the influence of his fears, I do most earnestly entreat the Court to mark the malignant object of this prosecution, and to defeat it: I beseech you, my lords, to consider that even by discharging the rule, and with costs, the defendant is neither protected nor restored. I trust, therefore, your lordships will not rest satisfied with fulfilling your JUDICIAL duty, but, as the strongest evidence of foul abuses has, by accident, come collaterally before you, that you will protect a brave and public-spirited officer from the persecution this writing has brought upon him, and not suffer so dreadful an example to go abroad into the world, as the ruin of an upright man, for having faithfully discharged his duty.

My lords, this matter is of the last importance. I speak not as an ADVOCATE alone—I speak to you AS A MAN—as a member of a state, whose very existence depends upon her NAVAL STRENGTH. If a misgovernment were to fall upon Chelsea Hospital, to the ruin and discouragement of our army, it would be no doubt to be lamented, yet I should not think it fatal; but if our fleets are to be crippled by the baneful influence of elections, WE ARE LOST INDEED! If the seaman, who, while he exposes his body to fatigues and dangers, looking forward to Greenwich as an asylum for infirmity and old age, sees the gates of it blocked up by corruption, and hears the riot and mirth of luxurious landmen drowning the groans and complaints of the wounded, helpless companions of his glory, he will tempt the seas no more; the Admiralty may press HIS BODY, indeed, at the expence of humanity and the constitution, but they cannot press *his mind*—they cannot press the heroic ardour of a British sailor; and instead of a fleet to carry terror all round the globe, the

Admiralty may not much longer be able to amuse us, with even the peaceable unsubstantial pageant of a review.*

FINE AND IMPRISONMENT!—The man deserves a PALACE instead of a PRISON, who prevents the palace, built by the public bounty of his country, from being converted into a dungeon, and who sacrifices his own security to the interests of humanity and virtue.

And now, my lord, I have done; but not without thanking your lordship for the very indulgent attention I have received, though in so late a stage of this business, and notwithstanding my great incapacity and inexperience. I resign my client into your hands, and I resign him with a well-founded confidence and hope: because that torrent of corruption, which has unhappily overwhelmed every other part of the constitution, is, by the blessing of Providence, stopped HERE by the sacred independence of the judges. I KNOW that your lordships will determine ACCORDING TO LAW; and, therefore, if an information should be suffered to be filed, I shall bow to the sentence, and shall consider this meritorious publication to be indeed an offence against the laws of this country; but then I shall not scruple to say, that it is high time for every honest man to remove himself from a country, in which he can no longer do his duty to the public with safety; where cruelty and inhumanity are suffered to impeach virtue, and where vice passes through a court of justice unpunished and unreprieved.

Mr. Solicitor General, (leading Counsel for the Prosecutors:)

Please your lordship to favour me on the part of the prosecutors, who have had no opportunity whatsoever of answering the affidavits, particularly those against whom, if I am able to judge of the affidavits in the cursory manner I heard them, the whole attack is levelled. My lord, the application is made to your lordship by people in public offices, and have the honour of executing these public trusts. They conceive themselves calumniated by this paper, which I shall presume to call a libel—and a libel it is in every sense of the law. My lord, the application is against a person, who has taken upon himself to state to your lordships the several services he has been in, which made no part of the business before the court, but upon that subject your lordships have heard much, in this motion that was stated by Mr. Baillie. It is stated, the directors are to have 10s. a time for their attendance, but I contend there is no clause in the charter, nor any bye laws, which regulate that time; the intimation is, that it is expected they will all attend constantly, notwithstanding which there are several directors who generally constitute a board, for which they receive 10s. as a gratuity.

I did not hear that it had been sworn by captain Baillie, that he, as a member of this board, has not as constantly as any one received this 10s. a day, which he conceives to be totally against the spirit of the charter; he has not said in his affidavit, or hinted, it is not in the charter; though he condemns the practice, he does not deny, that he has not most regularly accepted of 10s. for his attendance.* Mr. Baillie making one of this board, is of opinion, that on every motion (unless it is to make the same motion he wishes to have adopted, and which does not succeed) those that constituted the board, were not left to decide upon it, but vote by directions they received. What evidence is there of this, which is charged upon the directors of the board? What proof has captain Baillie given, that there is a foundation for that imputation upon them: and yet they very wisely slipped over where the charge in the first part of the affidavit began, with the particulars respecting one person only; but here is a direct charge upon every member of this board, except Mr. Baillie himself, that in giving their judgment upon the deliberations held by that board, they went by directions they received from others, and every vote they give, is not a vote that in conscience they ought to give, but an implicit obedience to the dictates of somebody else. Can a greater imputation be thrown upon any board, authorized to act upon their own judgment? and yet this is a direct charge in this book by Mr. Baillie, who is a director. This will tend to shew, whether this book was meant to redress grievances or not. One great charge too, is, there are landmen in this situation, who are reprobated by the very terms of the charter. Mr. Murphy, from his knowledge, said he knew of the number of officers of 27 landmen and only 22 sea officers.

With respect to the landmen in the several departments of this charity, there is and ever must be some, if they have no other persons qualified. There are many offices which must be the particular business of landmen, as their educations enable them to discharge the duties of their functions, which is absolutely necessary. But Mr. Baillie thinks the description is that they should be seamen, who have served for many years, or have lost their limbs, that they are the proper persons to execute this office. He is so kind as to say the clerk of the works may not perhaps be a seafaring man. And also the surveyor, who is to do their works, and make the estimates of their buildings, to plan them, and to propose their contracts and their alterations, from time to time; these probably may be landmen—and yet these offices are as much within the prohibition as any other. Mr. Mylne is supposed not to be particularly attacked in this book, as

* There had just before been a naval review at Portsmouth. *Orig. Ed.*

* Captain Baillie did never receive his 10s. but for every actual attendance: what he has complained of is, that several of the directors retire as soon as their names are taken down. *Orig. Ed.*

Mr. Erskine says, but in general he has misbehaved himself, and therefore he wonders he should be amongst those who have thought fit to complain to this court. There are officers too that are called landmen, mere clerks in office, those whose duty require them to be landmen—he has taken the clerks in office, and Mr. Mylne and others, who are to constitute the number stated; though Mr. Mylne may not be a particular person alluded to, yet he may be of the number.

Court. I don't know any affidavit that states it.

Mr. Solicitor General. I have not seen the affidavits: your lordship knows, there was such a noise in court at the time they were read, it was impossible to distinguish some parts of the affidavit. I believe the meaning of the affidavit comprehends all these men, who from their several functions in the Hospital must be of the same description.

My lord, the reverend Mr. Cooke is another person, who is the first chaplain to this Hospital, who has suffered so very much in the business, Mr. Erskine, out of compassion to him, would say nothing more upon the subject; but from the ridicule of one gentleman, and the invective of another, he has already had his share of the abuse. As to the ridicule or invective, if any answer is to be given, it is to be left to Mr. Cooke himself. I can only answer to those particular parts that respect his duty here, and the subject matter the Court is to enquire into. Mr. Cooke is charged in this pamphlet with having purchased a seat at this board, and with having bargained for this place of chaplain, under the sanction of the first lord of the Admiralty. My lord, these are not places purchased; a directorship is not a place for purchase; it must be exercised, at least, it ought to be exercised by persons appointed, upon the consideration of the abilities and situation of the person who can or cannot attend the duties of this Hospital, and discharge them. Though I don't know it, at least it has not been stated by the counsel, and, I presume, there is nothing in the affidavits to prove any such transaction ever happened, as that Mr. Cooke purchased a seat at this board, or bargained for it with money.

Mr. Bearcroft. My lord, this charge is not denied by Mr. Cooke in his affidavit.

Mr. Solicitor General. But it is said, he is an unfit person to apply to your lordship. With respect to Mr. Cooke, there is another objection made to him, which I should have thought did not come within the qualifications necessary, by the terms of the charter: the objection is, he happens to be a Huntingdonshire man and a landman. And it seems the industry of Mr. Baillie, who says, there are a number of them freeholders or burgesses of Huntingdon, has found out that there are three or four of them officers of the Hospital. I do not know the affidavits go farther—that they are freeholders or bur-

gesses of the county of Huntingdon. Mr. Godby, the steward, is charged with having connived with a Mr. Mellish, in imposing upon the Hospital in the most cruel manner, respecting the poor pensioners within it. That the Hospital, in the most honourable way, contracted for the best provisions they could be furnished with, their intentions were defeated by the criminal corrupt connivance of Godby with Mellish, that instead of the best ox beef there was bull beef, and ram mutton instead of wether. Then there is a charge against somebody, I don't know against whom it is meant, for compounding the penalties; I presume the court of directors, against whom the charge is meant, for compounding this offence with Mellish, after his being convicted before your lordship once in an action; afterwards another action was brought, and he would again have been convicted, but the penalties were again compounded, to the dissatisfaction of Mr. Baillie and others. who expected he would be severely punished. With respect to that most criminal connivance of Godby, there is not, as I conceive. the least evidence to support it in truth, I speak now from some knowledge I have upon the subject, there was no such imputation of a crime upon him at the trial.*

My lord, that action against Mellish may be in the memory of your lordship, which was brought by the order of the court of directors, when a verdict was found against him upon the several breaches assigned in that action against the bond, which expressly obliged him to furnish meat, according to the stipulated contract and prices. It appeared, he had mixed it with bull-beef, in such a way, that to the eye it would deceive many people and judges, he had contrived it in so fraudulent a manner, but the truth came out; there arose complaints all was not right; upon which they appointed the meat to be inspected, and particularly examined by boiling, to detect this abuse; they did try it, in consequence of which there was a conviction of Mellish; though there was a great many penalties sued for, they did not take any other but what they thought they had evidence of; it stood in your lordship's paper, and there was some talk of delaying the cause, when it was mentioned that it was made up.

Since that action was brought, there has not been the least complaint, and the last action was for breaches of a contract that had been made before the bringing the first action; since the action, meat has been delivered according to the contract, and there has been no objection.

This man was willing to submit himself to the directors, and at last it ended, upon the

* Upon the trial it was observed by the judge, that the imposition could not have happened, but from the ignorance or corruption of the receiving officers. *Orig. Ed.*

man making a submission, which was a matter as proper for the directors to animadvert upon, as any men whatsoever: his crime was compounded, upon what terms Mr. Baillie does not state, nor do I know any thing more, than that it was stated in the way I have now stated.

One great charge against the directors was, this man was permitted to contract with them again. My lord, from the time of that action, has there been any breach of contract? Mr. Baillie does not pretend there was any.

Capt. Baillie. An hundred times.

Mr. Solicitor General. There is no such thing in the affidavit, that I know of; the moderation of captain Baillie convinces me of nothing but that the directors acted upon great deliberation and full examination; but I see there is no objection stated in the book, nor is there any affidavit of the kind.

It is said there was no advertisement to deliver in any proposals, I did not hear it was sworn in the affidavit; but the contrary is true, and that Mellish delivered in proposals more reasonable than any body else.

He now receives a certain sum from the victualling office, and they have found his ability is such he can perform the contracts within the time and can serve them in as good a way as any.

It is certain the Hospital brought actions against him, and found him guilty of frauds, but there is no pretence to say it since this new contract. Mr. Baillie does not mention there has been any fraud committed since, and yet this is the charge upon the directors, that they have since contracted with a man that had been convicted of fraud.

Every body conceives from a charge of this kind, from the manner expressed here, Mellish has a corrupt influence in the court of directors, and a preference before every body else, in the manner stated to your lordship it is shewing the directors had the worst of motives for contracting with a man whom they knew would be guilty of frauds upon the constitution of the Hospital, or else it meant nothing, and Mr. Baillie would not have inserted it without some meaning or other.

Then, my lord, there is a charge upon one Ellis, that he got into debt with the Hospital to the amount of about three or four thousand pounds of the charity money, and he absconded with part of their money, nothing is more true than that it got into his hands, and he absconded, and they have never got the money.

And what is a more serious truth, they have no chance of getting their money, because Ellis at the time he was found out in this business was not worth a shilling; respecting this your lordship knows that the board necessarily advised with people for the direction of a business of this kind of the law; and in truth it appears the moment his detection was laid before a proper officer to prosecute, Ellis disappeared.

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And this is charged as a criminal neglect upon the part of the directors, in suffering Ellis to abscond with so much money in his hands, or which he had embezzled; these are charges that are made in this book against the directors that generally constitute the board.

A story was told you of one Huggin, Mr. Mylne's labourer, that made no part of the business, I believe it was not sworn to, I took it from Mr. Murphy's stating some action, which brought about a dispute of a nurse in the Hospital, and she would not submit her case to a decision of the council, and she was turned out, and they add as a fact a son of hers was turned out too.

Mr. Baillie has not assigned the reason in his affidavit for turning out the son of this woman, if he had I should have had no observation to have made about it, but I have enquired about this business, and I do not see it makes any part of the affidavits. The son was turned out because the mother had not a proper certificate.

The mother had produced a forged certificate to get him in, this was in truth the reason why this boy was turned out of the charity, and would of itself be a sufficient reason to turn the woman out that had got the forged certificate; but this makes no part, that I know of, respecting the question in this case.

As that was mentioned as an act of cruelty in somebody not named, I thought proper to take so much notice of it that it might be laid out of the case.

My lord, that there is matter of libel and calumny contained in this book, not one of the gentlemen have disputed, that a reproach is thrown upon the body of directors, not one of them have said a word about.

We are told it is not a libel though it were false—though it contained calumny of the deepest dye, it is not a libel—Why? because it is laid before proper persons in the ordinary course of redress, by a person whose duty it was to represent to those that were to hear and redress; that was the position laid down; the gentlemen might have spared themselves the labour of citing any author whatsoever.

If it was captain Baillie's duty to represent any abuses or supposed abuses of this charity, and he had made that representation really and with intention to have the same redressed, without any intention to calumniate the character of any gentleman,

The gentlemen might have contented themselves with that proposition, and been sure it would not be opposed—Who are the officers to remove them? The appointment is in the Admiralty, the amotion is in the lords of the Admiralty by the charter.

Did captain Baillie deliver this to lord Sandwich and the rest of the lords of the Admiralty merely with a view to have an enquiry into the abuses he is supposed to have exposed?

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Did he deliver it to the lords of the Admiralty to let them know the directors voted by some influence or other, he could not tell what? Could it be the purpose of this book, framed as it is with reflections upon that first lord of the Admiralty, and every person serving under the first lord of the Admiralty?

Could it be imagined this was done with a view to draw down an enquiry, and to have redress? Is it possible he should abuse those in the grossest terms in whom the redress lay, at the time he was supplicating for redress?*

Has he confined it to those he supposed had the power of redress, to the governors of the Hospital? Has he confined it to them? No—He says it is true I have delivered it to them, but I have delivered it to some friends of mine.

Court. Only since the prosecution to advise with his counsel, or a friend or two for advice upon the prosecution.

Mr. Solicitor General. I thought he confined it to his counsel.

Court. To his counsel and a friend or two, and before he let any one person have it he delivered one to the first lord of the Admiralty.

Mr. Peckham. When he delivered it to me, it was with a strict charge not to let it go out of my hands to any body.

Mr. Just. Willes. Cowley's affidavit expresses it.

Mr. Solicitor General. I stand corrected—Then it will be for your lordship to say whether this could be the motive of captain Baillie in delivering this book, with the several charges contained in it, which were not the subject matter of redress?

In particular, what complaint is there against Mr. Stuart, who now appears before your lordship as one arraigned for having voted in the directorship under the influence and the direction of somebody else; nay in being told his sitting in the directorship is incompetent to him, and the office he bears, as he was by that means to inspect his own accounts, and be the judge of the reasonableness of the articles? Is there any foundation for this?

What is the foundation?

Mr. Stuart is the surveyor of all the works carried on in this Hospital, it is not contended by Mr. Baillie (I don't know whether he makes an express exception of that in particular) he is not fit for this duty, or to judge of the plans and estimates laid before the Hospital.

It is particularly the business of Mr. Stuart, not only to inform himself of the plans or estimates laid before them, but the utility of them, and the expence with which they are to be attended.

Mr. Stuart has a certain annual salary as surveyor of the works of this Hospital, and whether there are more or less is nothing to Mr. Stuart, but he is charged in his department with giving his opinion upon some articles for the benefit of other people—Is there any foundation whatsoever in this charge against Mr. Stuart, who is in truth an officer at an annual salary? it is totally indifferent to him, as the expence the Hospital is put to, is not determined by him, he is only to see there is nothing improper done or charged.

This is the nature of Mr. Stuart's situation with respect to these charges made upon him by Mr. Baillie.

We are told too we are not within the ordinary rule or course with respect to informations; and the case of general Plaistow has been mentioned, where the court required a particular denial of one of the charges, in a paper upon that general's conduct.

These persons are charged with having imposed upon the court in the manner set forth; and that they have in their breast a salvo for the oath they have taken, and that they themselves have put a construction upon the articles and charges—and they swear they are not true according to that construction.

Is it possible to put that construction upon this affidavit; or if an indictment were preferred against them, is it possible for any counsel to stand up and tell a jury what they have sworn from their own ideas are contrary to the ideas of every man upon the subject.

They conceive the charge to contain that imputation, which in truth the directors do not deserve, and therefore they swear they are not guilty according to that imputation.

What they have sworn does not apply to them any otherwise; there is not one of them, nor any counsel of the bar, would stand up to state such a fact before a jury, and call it perjury—it is impossible. I have stated to your lordship many general charges I have selected, so far as the general charges affect any one of them—so far they say they are not guilty.

In the first place, it is said they all vote according to direction, they never give a vote but from direction, and they suspend their vote till then—What does that imply? Can it have more than one meaning, which is this, they don't use their own judgment as they are bound to do? it cannot have any other construction.

It is said they have not gone into particulars, but contented themselves in making these denials, with a reservation in their own minds—from which reservation they cannot possibly be guilty of perjury.

I wish they would state to me that alternative in any part which is applicable to the denial, as it would go to a great number more of the general charges to which these gentlemen have sworn (it is said) to satisfy the court—I take it in each of them there is a denial sufficient, and no prevarication whatever, your

* The Lords of the Admiralty make but a small part of the governors and commissioners of the Hospital. Mr. Solicitor General says gross abuse without saying what that abuse was—only a plain representation of facts. *Orig. Ed.*

lordship will consider the denial and the import of this charge.

That these are also public officers executing a public trust; the Court have thought any objections being reported of people in such capacities, and not founded in fact, have been a sufficient ground to grant an information.

As a charge upon a man in a public capacity, not doing his duty is a libel; in private there may be libels, as in the case of general Plaistow, it was not only charging him with having been at the Old Bailey singly, as Mr. Erskine has said, but the facts of his being abroad as a gamester, and dealing with false dice, and many other particular charges of that kind in a particular company.

The Court required him to make an affidavit of these articles; that was what the Court required him, to make an affidavit—he complained of this as a libel—the facts were stated with precision and particularity, so he could not be under any difficulty in answering.

That was the case of general Plaistow, but your lordships have heard a great deal which passed at the committee of enquiry, and that it was a joke, and the trial was set on foot for acquitting those charged, and throwing the blame upon Mr. Baillie.

And Mr. Baillie states he went to the Admiralty to have this enquired into, and lord Sandwich told him to name seven out of the directors, which consist of twenty-four, some by their offices, as the governor, lieutenant-governor, auditor, and treasurer, are directors, and the rest make up twenty-four, that are appointed by the Admiralty.

Have they stated the names of those appointed by the Admiralty? They have stated the chaplain, surveyor, and six-penny receiver to be three; but have they stated the other seventeen? of what description they are? how likely to be influenced to prostitute their characters for the acquittal of men guilty of offences of this kind? the motions being in the Admiralty, the first lord of the Admiralty wishes he would appoint seven, as he admits in his book, and that many of them are of irreproachable characters. Says lord Sandwich, do you name seven out of them, and I will send an authority for them to make the enquiry; he was to name seven of the directors to enquire into the directors' conduct, and of those several officers that are appointed by the Admiralty, who have a power to remove them.

Mr. Baillie in his book has injured a great many persons of most irreproachable characters, some of them men quite at liberty. Says lord Sandwich again, Mr. Baillie, name seven men out of the directors, and I will send a direction to them to enquire into the bottom of it? No, Sir, says he, I will not have any of the directors: then says the lord of the Admiralty to him, If you will not name them, I will: he names sir Meyrick Burrell, Mr.

Cust, captain James, captain Barker, Mr. Wells, captain Reynolds, and Mr. Savary.

Court. I do not find, Mr. Bearcroft, in the present affidavit, any of those directors referred to by the printed memorial in the book amongst the seven directors?

Mr. Bearcroft. My lord, there are some of them.

Mr. Solicitor General. Not one of them among the seven named; and out of the whole number Mr. Baillie might have taken any seven. He might have taken any; name which you will out of the body, which you know to consist of men of the first character and beyond all reproach; name them yourself? I will not name them because they are parties: What could be done? Lord Sandwich named seven of those directors, not one against whom there was any particular charge, and they were not at all concerned in the transaction whose general business it was to attend these meetings.

In every corporation and assembly they must be selected as these were; every body knows they must do all the business incumbent upon the members to do; it must fall into the hands of those who attend in general.

This enquiry was appointed, says Mr. Peckham, but it was an illegal court.

Mr. Peckham. I did not call it a court, but men appointed to enquire and report upon their own conduct, not to give judgment and sentence too, they should have done nothing more than report to those who had that power.

Court. I take it to be a committee appointed by the governors; at a general court of governors they were appointed.

Mr. Sol. Gen. Yes, the court of governors consist of a great number of gentlemen; seven of those men are appointed by the court of governors, and Mr. Baillie might have had the nomination of them, as I said before, of every one of them; he would not acquiesce; says lord Sandwich, I will name them: No, says he, the governors are to name them.

We did not know what was the intention of the committee to do, because the application to this Court was first made; we did not know at that time the report of this court of enquiry.

Court. Not by the report?

Mr. Sol. Gen. Yes, by the report so soon as the enquiry was over, but during the enquiry, while they were consulting amongst themselves about the report, this application was made to the Court, not waiting till the report was made.

Court. The report was publicly read to Mr. Baillie, though he had no copy of it?

Mr. Sol. Gen. No, not then; it was in August.

Court. The motion was in Trinity term.

Mr. Sol. Gen. The motion was in Trinity term for the information, but the business of the enquiry was not over.

Mr. Just. Ashhurst. Where was the use of waiting till the end of the enquiry?

Mr. Bearcroft. My lord, it is sworn by our affidavit, that the business of the meeting of the committee was to consider of and make the report, and they do not make the application then.

Mr. Sol. Gen. Mr. Murphy says, to their knowledge it was in August, and not before.

Court. It might be in August, but on what day of the month was it read in the hearing of captain Baillie?

Mr. Sol. Gen. It certainly was not read to him; it was not drawn up; I remember asking the question, what was the result of the enquiry, and they said, they could not tell.

Court. Something runs in my head that it was read to him.

Mr. Bearcroft. It was read to him, my lord, at the time he was told he was suspended.

Mr. Sol. Gen. It was read in the general court of governors.

Court. The report is the 6th of August.

Mr. Sol. Gen. It was read to Mr. Baillie at the general court of governors of the Hospital, who suspended him in the month of August. In truth, I was not certain to the time the report was made. I asked the attorney, when he came into court the last day; he told me, those who were advised upon this business, thought it not a proper thing to move this Court till after the enquiry was finished, they thought it might be an improper influence.

The gentlemen have over and over again alluded to the great delay in the progress of that enquiry, not a word of which did I ever hear a hint of, till Mr. Bearcroft stated it.

And, that this gentleman suffered extremely, not only from the indecent manner with which those that constituted that committee treated him during their proceedings, but by a gentleman who fortunately is here, Mr. Morgan, to answer for himself, and, I trust, will acquit himself of every insinuation upon him before the Court.

There is another part of the case which your lordship has heard a great deal upon indeed, which was what passed subsequent to this report. Your lordship has had an account of the manner in which this report was read, in what way it was received, and the consequences that attended Mr. Baillie; that he was dismissed by the holding up of hands, or in some such ridiculous manner, by the meeting of persons whom they did not name; it was a meeting of the governors of this Hospital.

This part of the case which has happened in August, your lordships have no opportunity of hearing a syllable about; the business was a subject of complaint, originally founded upon affidavits previous to the transactions.

Your lordships have heard a great deal of that which was stated upon affidavit. Is

there any person applying to this Court, if a party in the transactions alluded to in August, that has a possibility of being heard?

Are your lordships to take all these suspicions and apprehensions of Mr. Baillie, with respect to the motives for these transactions, as containing imputations upon any one gentleman?

Court. As to that you are heard; but as to the fact, that the governors have exercised their judgment so far as to have suspended him, is that denied?

Mr. Sol. Gen. I only mean *de facto* he is suspended.

Court. Then *de facto* he is suspended; if so, I would adjourn the consideration of this and have it enquired into.

Mr. Sol. Gen. He is in fact suspended.

Court. That is all I wanted to know.

Mr. Sol. Gen. As to the mere fact of suspension, they have had no opportunity of being heard upon it. If there is any imputation arising upon them for that, they have no opportunity of answering: to be sure, I do not pretend to say, that is not a material fact to be laid before your lordship in the examination of the business, whether it is proper for your lordship to proceed or not, seeing the party has had some punishment for this offence.

I do not quarrel with the fact being stated to the Court, but the manner in which it was stated, and the animadversions made upon the persons that constituted that Court when the suspension took place.

This is a part of the case that cannot be taken into consideration at all more than the mere facts of the case, and that the party has suffered to the amount of 600*l.* a year.

It may be so; that fact, to be sure, is a very material consideration for your lordship in the discussion of a subject of this kind, when using that discretionary power which is in the Court.

I apprehend this business is within the very rule necessary for informations, as there have been imputations upon a body of men executing this charter according to the best of their ability and agreeable to their consciences.

They are charged with having acted by the mandates of others, and not only so, but they suspended their vote till they received such directions; and in other instances, the seats were bought at this board, and if so, they are unfit to come there; that they ought to be placed there by persons in whom the trust is invested, and not by others; these are the facts charged upon the directors, and no answer has been given to it.

Therefore, under all these circumstances, I trust your lordship will see it is a case proper for the animadversion of this Court; it is a libel upon persons in public stations; it is insulting them in those stations, and is distinguishable from the common case of a person applying for an information for a libel.

I submit to your lordship, here is such a denial of the charges in the libel as will satisfy the Court; if your lordships do not interfere in this case, every person's application hereafter may be over-ruled, though the application be made by a body of this kind.

And they may be told, as these have been, they are influenced by other motives than their own conscience when they give their votes; and, I trust, your lordships will say, this rule ought to be made absolute against captain Baillie, for it is a libel upon the characters of men that did not deserve it, with an intent to transmit to posterity this stigma, that the men who were to execute this public trust did not act upon their own judgment, but were made the instruments of revenge of others.

Mr. Newnham :

May it please your lordship to favour me upon the same side as Mr. Solicitor General. Having attended as carefully as I could to every thing said by the gentlemen upon the other side, I confess, I was rather inclined to think they were moving for an information from the manner they defended themselves, than shewing cause against this rule.

The gentlemen have all founded themselves upon the affidavit of Mr. Baillie as supposing it substantially true, and upon that they suppose every abuse, which the book says is true, is founded in fact, and that was the defence he meant to make.

It is not expected we should answer the ridicule of the two first gentlemen, the invectives of the third, nor the florid eloquence that fell from Mr. Erskine, but to submit what we have to say in favour of the prosecutors, who are only attentive to their own character, and in their consciences knowing (as they state) they are guiltless of the charges contained in the libel.

That there are charges against them was admitted by some of the counsel. Mr. Bearcroft stated some very severe charges, though the other gentlemen seemed to say, there were no charges of a specific fraud against them. I do not know what charge can be more severe or specific against any body of men, namely, that for want of ability or integrity, they are unfit any longer to continue in the exercise of that important office they held; it is calling them in other terms, fools or knaves, or both, and they thought it incumbent upon them to proceed against the gentleman that dared to asperse them, and to say the charge is groundless.

There are several other specific charges—one, that a great quantity of prize-money Mr. Baillie supposed to be due for prizes taken in the late war.

Your lordship knows those prizes unclaimed are given by parliament to Greenwich Hospital. He states, since the charter that passed preceding the date of this publication, the directors have been so inattentively negli-

gent to the affairs of the Hospital, that no steps were taken to recover this money; whereas, if any step had been taken, more than forty or fifty thousand pounds might have been recovered.

Mr. Baillie must know steps have been taken, and thirty or forty thousand pounds has been recovered, and every step has been taken to promote a speedy recovery; and, as he states, these prize-agents were living at the West Indies, it was necessary to file a bill in the court of equity in Jamaica, and upon every interlocutory order, the prize agents applied to the privy council. Mr. Baillie knows that they applied to the privy council. I have had the honour to attend them upon ten different consultations; I think they dismissed the appeal with costs.

The order of the privy council went as far and farther than they had ever done before; particularly, one of the learned judges desired them to go as far as they could, and they gave considerable costs in the business; so they went on in the course of the business as far as the court of chancery in Jamaica would permit them to proceed.

Court. I hope they always give interest. I always give it at Guildhall, and the privy council should: I only give you an instance of a precedent.

Mr. Newnham. I hope they will ultimately give interest in Jamaica.

Court. You observe it was a case where the agents seemed to be feinting, and keeping the money back, after it came into their hands.

Mr. Newnham. Then with respect to the other instances, particularly the butcher, the directors must have been plaintiffs, though not by name, and it was not to be expected they would betray the cause of the pensioners. What was the opinion of the directors? they directed that an opinion should be given immediately, and in decisive terms.

In consequence of that opinion, a method was taken to prosecute Mellish, and he was convicted; and would have been convicted a second time; but the directors are charged afterwards with contracting with this man.

The contract was open, in consequence of public advertisements, and Mellish was the lowest bidder, his offer was the lowest terms. Would not Mr. Baillie with greater propriety, and more force, have abused the directors with want of attention to the interest of the Hospital, if they had not taken the lowest contract. Is there any thing to say of him after the second action? He is stated to be worth 80,000*l.* that is not by defrauding the Hospital.

Court. He meant that.

Mr. Newnham. He offered to do it upon better terms than any body else. Respecting the specific terms of the charges, they are found to be groundless, and they are in fact, and in terms, positively denied. It is said, so far as they tend to criminate the persons making the affidavits, they are false. One

person cannot swear what relates to another person is false, but so far as relates to himself, each says it is false.

What is the objection to Mr. Stuart? Is he incompetent? Is he unfit for the office of surveyor? and his knowledge in the profession so bad and trifling, as not to make him worthy of the appointment? Is there any instance of the sort, or any thing in this affidavit of Mr. Baillie fixing any particular charge upon Mr. Stuart?

I think it is the same, only in the publication with respect to Mr. Mylne, it says he is a landman.

That is not imputable to the directors. Is it at all said or proved, within the construction of this charter, that every person whatsoever, employed in the management of the Hospital, must be a seaman? Should an architect and a builder be a seaman, or any such persons who are paid for their particular labour, is it incumbent upon them to be seamen? I conceive not; and what is stated of Mr. Mylne being the clerk of the works, is applicable to other builders, and they will not say the clerk of the works ought to be a seaman.

Then one of the gentlemen is charged with being the contriver to defraud the Hospital of 1,000*l.* for cleaning pictures, as Mr. Bearcroft said of Mr. Stuart.

Would your lordship imagine this was a painted hall, containing I do not know how many thousand feet, and could not be repaired in a proper manner, under 1,000*l.* or thereabouts?

It was stated to be an immaterial thing to the Hospital, whereas in fact Mr. Baillie is obliged to acknowledge it brings in 4 or 500*l.* a year revenue for shewing this to strangers.

It was necessary to preserve it, and it does not appear Mr. Stuart was in any degree guilty of the smallest impropriety, or the friend he recommended, who actually has done it at an inferior price to that which was usual.

With respect to Mr. Cooke, the subject has been worn quite threadbare, he (Mr. Cooke) states the charge against him to be false.

He is stated as having purchased, under the sanction of a particular person, whose name I do not wish to mention, the office he enjoys. Is there any proof of it? None; and it is denied flatly and positively by Mr. Cooke.

Court. Do you mean that he gave the chaplain that resigned, money for so doing—not that he purchased it, but gave the sea chaplain something to go out.

Mr. *Newnham.* It is stated in the book he purchased the chaplainship; that he bargained and paid money for it under the sanction of the first lord of the Admiralty.

Mr. *Bearcroft.* Is that denied in any of your affidavits?

Mr. *Newnham.* I do not know. My lord, it is made matter of complaint. I considered it as a complaint made against the prosecutors, in the manner the gentleman admitted, that a

vast number of landmen found their way to the Hospital. By whose means?

Is that imputable to the directors?

Certainly not.

It is stated however, that this book was not intended as a general publication, but merely as a remonstrance to persons competent to redress grievances, of which it contains a long detail; in consequence of which Mr. Baillie is desirous to have an enquiry into their conduct, and a general board of the directors is summoned, and Mr. Baillie attends.

To whom was the application to be made for redress of internal grievances, and the regulation of the house, but the directors that were competent to interpose?

Mr. Baillie was offered to choose seven of his own naming; he declines it; he could not decline it upon account of none of them being competent, for he states, that many persons were of irreproachable character and honour amongst them, and there was no person amongst the committee, against whom there was any particular charge made.

They sat seven days, and make a report, which was subsequent, in point of time, to the application to your lordship for this rule; for the application was made in Trinity-term, the report bears date in August, considerably after the expiration of that term, so that every thing was subsequent to that original application to the Court for an information.

The prosecutors of this rule have not had the smallest opportunity to answer in any respect the affidavits, and it rests wholly upon the affidavit of Mr. Baillie, and the others, without the smallest opportunity of being heard against them.

I take it from them, that all the specific charges against every one of them are false; and they have as good a right to say they are false as they have to say they are true. The affidavits contradict each other.

I have no doubt volumes of affidavits of other very respectable people might be produced to contradict every one of the charges in the affidavits, and with respect to some of them, they are exceedingly mistaken and misrepresented, which is as much as decency will permit a counsel to say of those that fall immediately within my knowledge.

But supposing them all true, or false, it matters not—it is said it was only a complaint to persons competent to redress grievances, and meant as a remonstrance or memorial, and in the first place, it was not meant to be public, only to a set of gentlemen competent to redress the grievances.

I do not think it is proper to lessen or diminish the right of application for redress of grievances, to any persons competent to relieve them; but I do not know how any man presenting a petition or memorial to any set of men, has a right to say, You are a pack of fools or knaves. If such a thing is done, it is not within the right of petitioning; that is my idea with respect to this publication. To

whom does he deliver it? Not to persons capable of redress—he delivers it to persons who have no authority to amove—he tells you the directors are knaves. Can the directors amove themselves, or their fellow directors? Certainly not: and therefore it was not competent to apply to them for redress, in any respect, of that particular grievance, which, he says, was occasioned by a pack of knaves or fools, having found their way into an hospital by means of parliamentary influence. I have nothing to do with the ground upon which they were appointed to the office they enjoy, I know nothing of it; but sure I am, that some of the persons, I see in the list of the direction, are directors, that were in before the first lord of the Admiralty had any office in this country. I believe some have been there for thirty years or more—this seemed to be the great ground upon which the gentlemen have gone: I shall leave Mr. Morgan to defend himself in the way he thinks fit, concerning his conduct at Greenwich Hospital; I have nothing to do with that part of the matter.

Court. That is not kind.

Mr. Newnham. I was not present, I cannot say a syllable upon the ill language they talk of, in respect to Mr. Baillie.

Court. You are concerned to defend an attack made upon special pleading.

Mr. Newnham. I have nothing to do with that in this case; there were some complaints of Mr. Baillie's heat, which has been conspicuous to-day; but we have nothing to do with it; if they have, by warmth or heat, behaved amiss to Mr. Baillie, I am persuaded, the gentlemen are sorry for it; I have no doubt there was a good deal of ill language, but I am persuaded such language could not have fallen without provocation. Upon the part of the present application to the Court, I am to submit to your lordship the present prosecutors think themselves aggrieved and ill-treated, and upon that ground they apply for an information, denying in a general way every fact that tends to criminate them, or that is made part of the charge.

Mr. Macdonald. I am of counsel upon the same side, and I have great acknowledgments to make, and thanks to express, to the gentlemen who have gone before me, for doing, in a great measure, my duty for me; it remains for me to state amongst the rest, how extremely ill Mr. Stuart has been treated; and all the objections in the affidavit of Mr. Baillie, and every other objection that has been made, do not extend to the case of Mr. Stuart. Two classes of persons, architects and other officers, have moved for an information, for being calumniated by this officer of the house, especially Mr. Stuart, who is more particularly concerned. Mr. Baillie has thought proper, in a separate capacity, to affect him in his business and occupation in life. I shall lay before your lordship those passages that affect him, and shew that he is calumniated.

For Mr. Stuart my more immediate address will be; but I shall say something, with your lordship's permission, respecting the general point.

It is very well worth observation, and I request your lordship's attention to the season at which Mr. Baillie chose to publish this account—just at that season when encouragement to seamen was most necessary, and by means of this book getting into their hands, or the examination of people who could communicate it, your lordship must see the consequence. Certainly the motive is clear; and the directors, as individuals, had a very proper motive for bringing this before the public. It certainly tends to discountenance seamen from entering into his majesty's service, if such a spirit, as this book might occasion, should diffuse itself amongst such a body of men—it was particularly dangerous at that point of time, the beginning of March last: it certainly was not a proper time to make such an application by publishing such a book. I shall not go through every thing that has been suggested upon the other side; but it strikes me, the gentlemen have given the go-by to the principal question, and directed their attack in a quarter not before the Court—where it is not my business to defend. The argument the gentlemen on the other side went upon, was ridicule, which has been used with success, from every hand that it came; and the eloquence that has distinguished Mr. Erskine gave me great satisfaction! In the course of my life I never felt greater pleasure than in hearing my old school-fellow, and one of the earliest friends of my infancy, deliver himself with such great ability, and I can only say of him *qualis ab incepto*. Mr. Bearcroft told your lordship it was a statement of facts to refresh the memory of the governors and directors, and not meant to be published at the booksellers or stationers by a public sale. As to public or private, is it possible for any body that reads a single page of it, or looks into any part of it, not to see that the publication was meant for general inspection, and meant at least to be seen by all those whose rank and situation of life make them governors? and then it can hardly be supposed the contents of it should not be perfectly public: as to publication there is little doubt it is to be considered as such, and that it is a libel; as to the publishing it every where, though perhaps it is not so universally published as if there had been a sale of it; but it having been given to all the governors, there can be no doubt it would be known to your lordships, and that all the kingdom must soon know of it. It is said it does not charge the directors with fraud by any manner of means. What does it do in the case of the butcher and of Ellis? If your lordship turns to almost any one page in that book, the very word 'fraud' occurs in almost every instance, corruption must appear in the facts themselves; that is the principal idea, and that an entire subordi-

nation to the direction of others was the case with all but a few of the particular managers of the Hospital, some of whom are contractors, and then that the directors are from want of ability or integrity, unfit to be directors of that Hospital, and that many other frauds might be proved; and it is not proved to be simply confined to those persons who are guilty of actual fraud.

But as for Mr. Murphy—to relieve Mr. Baillie, whom they had frightened with the terrible name of Mr. Morgan the special pleader, so as to have almost thrown him into convulsions,—he compares his case to the Seven Bishops; that must be flattering indeed to him, to be compared with seven bishops at once. I should make an apology for mentioning the case of the Seven Bishops with the least degree of lenity; it was upon resisting an illegal order which had been made, and it became the catechism of almost every subject in the kingdom; it appears there were certain specific acts required of them which were illegal. Was any specific act required of Mr. Baillie? In the next place what was said to be a libel in them, was couched in terms more decent than any that ever appeared before in the history of England, and that could not have been proved without their confession, which was squeezed out of them by the privy council, not by any proper process; the names of the counsel then were Saunders, Pollexfen, Sommers, and others. Is this delivered in that cautious and delicate way? Does it contain such form and at the same time such proper language for subjects in the exertion of their duty, with a due regard to the constitution? Is that Mr. Baillie's case? No, on the contrary, every page is full of the harshest terms; it is not merely stating them as matters of flippancy, and a little warmth which an honest intention might naturally produce, but there are innumerable passages expressed in the strongest terms. Your lordships have the book, and I might put it to the test to see whether the language is not libellous.

I think the construction put upon the affidavits is denied by Mr. Erskine pointedly. I have not any idea but in your lordships' judgment Mr. Stuart falls under a very different description from the rest; in so far as the buildings, decorations, and alterations of buildings have been altered, it was owing to bad design that he says the buildings have been altered, and it must be so when you convert a palace into an hospital; he says alterations have been made because the number of pensioners have been enlarged, and he denies any unnecessary works being done with a view to enrich himself, and he expressly declares all he has been concerned with has been in his apprehension necessary.

Court. The charge against Mr. Stuart is, he wants to have it a palace instead of an Hospital.

Mr. Macdonald. That he wanted to do so for his own profit I think it is.

Court. He has sworn positively he did not mean that, you will find the words don't carry it.

Mr. Macdonald. The words in my apprehension charge Mr. Stuart with acceding to the enlargement of the building to his own profit, and vastly to the injury of the pensioners of the Hospital; if I understand it, it charges Mr. Stuart—

Court. It charges him with making great rooms instead of lodgings for poor men; other people might be of a different opinion, and may think there should be a mixture of both.

Mr. Macdonald. Is this no charge upon Mr. Stuart, that for the purpose of a job he recommends a friend to clean the paintings in the hall? he says a friend of his will clean it for 1,000*l.* Is not that meant as an imputation, when it is said it might be done for 250*l.*? but his proposals were sent in two months after Mr. Stuart's proposition was accepted. It is one of the most beautiful things in this kingdom, and as to the equity of this recommendation, if it was to be done by the yard it would amount to four or five times that sum; besides it is material into whose hands it goes: it is not so much for the mere labour as the price you pay for a man's art in the business. Is it no imputation upon Mr. Stuart that he goes hand in hand with such persons? My lord, Mr. Stuart swears he did it not with any view but to preserve that profitable part of the building; if it should be considered as no merit, certainly there is no foundation for any imputation, and in that case, as upon his part against Mr. Baillie, I dare say he would be as well satisfied if it is not, as if the information is filed, if no merit is allowed, provided there was no imputation. I will not detain your lordship upon a subject of this sort any longer, I will only just beg leave to state to your lordship the state of the suspension of Mr. Baillie; when so much confusion had been bred in the Hospital by these disputes, and in some measure by the publication of Mr. Baillie, and when the Hospital was in confusion, the lords of the Admiralty, finding the business of the Hospital almost stopped, they thought fit to suspend Mr. Baillie, only leaving him in possession of his apartments: in other cases they would not, when a person is suspended, have permitted the use of their apartments without a very particular application. There he remains still; what will become of Mr. Baillie after this application, remains in the breasts of the lords of the Admiralty, the directors have nothing to do with the necessity the lords of the Admiralty thought themselves under to suspend Mr. Baillie. At Mr. Baillie's request they thought fit to have a committee to enquire into it, this is appointed by a general court, the persons named were of respectable characters; upon the enquiry being made, they make their report, which respect themselves and their own servants, the surveyor,

the six-penny receiver, the chaplain,* and the others. How was it possible to do this in any other mode? The directors are in a manner the masters, for a time, of the servants of the Hospital, their good or ill conduct is to be examined by them, they are the persons to complain of abuses; could it be by persons out of the Hospital a complaint could be made? Certainly not. In the first place they would not understand the business; in the next place it is said it was not proper to complain to these boards, or to bring it before them, for Mr. Baillie says the directors are accused, and they are not to be made judges. It is true every one of the directors were accused in a lump, they were accused of surrendering their powers to a few that do attend, and suffering them to waste the finances of the Hospital in every way they could for their own profit. It was impossible that could be the case; they made a report upon this enquiry, and I think they falsify every part if not the whole of these charges. My lord, how was it possible a publication of this sort should make its appearance at the Hospital, and not extend itself much farther; then publishing it at such a critical moment, it was rendering it impossible for the servants of the Hospital to carry on their respective business in their departments, when they were charged with supplying the men with bad food, bad raiment, and every thing else wrong, every species of charge that could disgust these men that are entitled to national protection and compassion; these gentlemen have had strange pictures drawn of them, and some very ably; Mr. Mylne and Mr. Cooke in particular. Mr. Mylne is as ingenious an artist as any can be, and when Mr. Mylne and Mr. Stuart are attacked in such a way as this, charged with such a breach of duty to this Hospital, and those things imputed to them that might diminish them much in the esteem of every body, and more especially the rev. Mr. Cooke has been treated as a man of his profession ought not to be; finding these men stigmatized in this way, it was impossible for the directors to do otherwise than they did. Your lordship sees the libel itself is far beyond any comment upon it; if your lordship should think it of an injurious nature and libellous, your lordship will make this rule absolute, as the suspension of Mr. Baillie can make no difference as to these gentlemen, who are accused of doing wrong as members of a public body in their public capacity.

Mr. Dunning made an apology for troubling the Court, as he observed sufficient had been said by the gentlemen before him, to explain the ground upon which they hoped the rule would be made absolute, and he should spare himself the trouble of saying more, as it would ill become him to trespass upon the time of

the Court, especially considering the opinion he entertained of the matter and abilities the gentlemen had shewn who went before him; he should therefore leave it to his friend Mr. Morgan, who stood in a particular situation to explain the matter more fully in defence of himself and his clients.*

The Earl of Mansfield:

There has great heat appeared upon this motion, and this motion has taken up a great deal of time unnecessarily, and it is not to be wondered at, for the arguments have gone into a variety of matter, not at all before the Court, and have charged persons who are not here to defend themselves, and not being here they have no opportunity to reply to them, upon vague assertions, not used upon one side more than another. Mr. Morgan has been even with the charges of that sort without any affidavit at all; but it is charged by affidavits by way of answer, to which there has been no opportunity of making a reply, and it has opened a large field, which we cannot possibly go into.

This is an application for an information for a libel, and it has been truly said, it is an application for an extraordinary interposition of the Court, and that interposition must be guided by all the circumstances of the application, and the answer that is given to it.

It don't follow because the matter is a libel; it don't follow, because that libel is published, that therefore this Court should grant an information.

The parties have a right to go to a grand jury by way of indictment. They have a right to bring an action; and therefore the Court always weighs the circumstances, and particularly the state of the case laid before them when the application is made.

And it is expected when the application is made, that the true and full state of the case should be then laid before the Court; because if there is that in it kept behind, which, if it had been disclosed, would have prevented the rule from being made at all; all the expence that is occasioned by it, is owing to those who have kept any thing behind.

In this book, as it is called, I have no doubt but there is a great deal of that, which, in its own nature, is defamatory and libellous.

It charges these officers with fraud, with abuse of office, with incapacity, with neglecting the interest of the Hospital, and breaking the duty of their trust: I have no doubt but

* N. B. See Mr. Morgan's evidence in the House of Lords in defence of himself and clients.

As four eminent counsel of distinguished merit and abilities had followed each other on the part of the prosecutors, it is thought unnecessary to lengthen these proceedings, already too voluminous, with the speeches of the rest of their counsel, for however ingenious their arguments might have been, they were evidently unfounded in fact and law, they are therefore omitted for the sake of brevity.—*Orig. Edit.*

that in its own nature, many of the particular parts pointed out; by those who apply, are in their own nature, defamatory and libellous. And with regard to Mr. Stuart and Mylne, whom captain Baillie vindicates by his affidavit, and says, he never meant to charge personally with doing any thing wrong; yet most undoubtedly there is an insinuation in it; no man can read it that don't understand it as they do.

If a charge is made, that they that had accounts to pass, were sitting as directors; it certainly infers they made a bad use of sitting upon their own accounts.

If a charge is made of the computation being much too large, with respect to a man that was to have the paintings of the Hospital retouched and coloured for the benefit of the society; it carries certainly an inference of something wrong and improper in it.

Thus it stands in general, barely upon the view of the subject matter of this book.

With regard to the publication, it is most certainly true, the distinction taken at the bar is sound and well founded. In a proceeding (in a court of justice) of the parties, that are under the control of the Court, nothing can be a libel; because if it is scandalous or improper, the Court where that matter is uttered or made use of, have it in their power to reprimand, to censure, and to punish.

And I remember very well that case alluded to by Mr. Lee, of sir. — Astley and Mr. Young; that was an affidavit of a matter which was scandalous indeed, but it was a charge made use of seriously, for the opinion of the Court, and read in a discussion here, for a rule of the Court to be made upon it. And if the Court had had a mind to have taken it up, they might have censured the maker of the affidavit, or attorney, or any one else concerned in it. But it was not the subject matter of an action or prosecution, if it is really so used in the course of a judicial proceeding.

But if the course of proceeding is a colour only, I agree with Mr. Lee, that will only aggravate the offence, by making use of a colour of justice to protect it.

I recollect the case of a man, one Perry, who was concerned in the matter of Dagenham Breach: he printed a brief in the country, where he charged his adversary with perjury in his answer. Lord Macclesfield committed him for it; that is not in a proper course of proceeding, for you make use of all the abuse you can in your brief against your adversary.

I remember a cause, where from the length of the proceedings, it was thought necessary to print it. The case of Penn and Baltimore. It was a voluminous brief; all the counsel had printed briefs in it. That could not be libellous, if it had been so charged upon the other side; because it was a proceeding, *bona fide*, in the way of justice, not a colour to convey scandal. And there are many other cases where the proceedings have been printed.

In the House of Lords they print their cases. If it was matter of scandal, the House of Lords would animadvert upon that; and the counsel concerned in the cause always sign the case, that they may be answerable for what it contained in it. They proceed in the House of Commons with printed cases, delivered to the members; but that is really and seriously with a view to the cause, and it comes under their protection. But if, in the time of the recess of parliament, while there are no proceedings, and under cover of an application for redress to both Houses of Parliament, scandal and defamation is conveyed, it is against law; and such printing and publishing would not be within the rule.

Now let us see whom this application is made by. It is made by the several persons concerned as directors in transacting the affairs of the Hospital. They state, before they came here, they themselves had taken this pamphlet up, in an application to the governors of Greenwich Hospital, as a matter upon which the governors ought to proceed in vindication of their characters; and stating, that they ought to proceed in the examination with regard to the abuses themselves.

In their own nature as governors (let who would be blameable if there was a foundation for it) they ought to proceed with respect to the calumniator, and they ought to make a proper enquiry, to see whether there was any foundation for it or not. The present defendant is an object of the jurisdiction of the general court, for he happens to be lieutenant-governor of Greenwich Hospital, and as lieutenant-governor of Greenwich Hospital to the extent of all the appointments, and the emoluments, and the place itself he held—he is the subject of the jurisdiction of the governors.

I see, by the charter, the management of the whole corporation is in the governors; but, from the number of governors, and the persons of whom they were composed, the charter supposes, the greatest number would not attend; and therefore, the charter provides a standing committee, and they are the directors; and not only that, but it provides for general courts.

“And we hereby direct, that the members of the corporation, or so many of them as conveniently can, shall, from time to time, meet together, at some convenient place, and that they, or any seven or more of them shall, and are hereby appointed to be a general court, whereof our high admiral for the time being, or any three of the commissioners for holding the office of lord high admiral, our treasurer, or any three commissioners of our treasury, or any three or more lords of our privy council shall be of the *quorum*”, and they are to meet from time to time.

The lords of the Admiralty have a power of granting places, and displacing, but under the controul of the governors; and there is this express clause:

“ Provided always, all proceedings whatsoever relating to the management of the affairs of the said Hospital be laid before the general court, to be held as herein before mentioned, and the same are to be at all times subject to their controul, to whom we do by these presents give full power and authority to controul accordingly.”

Now, how did the case stand at the time that this application was made to the Court? The gentlemen complaining, had applied to a general court of the governors to take that matter under their cognizance. The general court of the governors had appointed a committee to examine into it. The committee had gone through and made their report; which report was to be the foundation for the farther acting of the court of governors.

The affidavit upon which the rule was made, as I observe, was sworn upon the 6th of July, and, in that affidavit, which was sworn the 6th of July, they take notice, that the committee had gone through the whole business, and had heard it, and had finished the whole, as upon the Tuesday preceding. Now, what was the representation, when the rule was obtained? Why, that the defendant had acknowledged himself to be the publisher. Not a word of the manner of the publication, and yet the criminality, or the innocence, and justification of publishing the libel, depends upon the occasion, the motive, the view, the intent, and the purpose to which that application was made.

Suppose an officer of this court reads in a judicial proceeding, a libel—that is no publication in the criminal sense of the words. He carries it to his counsel in this case; that is no publication in a criminal sense. To apply to any jurisdiction, proper to take the matter into consideration, is no publication, provided, really and *bona fide*, he did not concur with publishing it to all the world; and there is not a pretence in all the affidavits (and they have been all looked into) there is not a pretence of one of them ever being bought, or any being exhibited at a stationer's or pamphlet shop. And the defendant, Baillie, swears positively, they were never by him given but to the governors, in an application for redress, and that he did not deliver them to the governors till he had delivered one to the first lord of the Admiralty, who, to be sure, as first lord of the Admiralty, is one necessary to be of the *quorum* at every general court, and he was with him ten days before he ever published it; and if it had been put in a way of redress it would not have been published at all. And he swears afterwards, till he gave it to his counsel, to have advice upon this prosecution, and to one or two friends privately for advice, he never gave it, or published it, in any manner whatsoever, and to this day he has not published it.

It is said, this is an ambiguous term, his having owned the publication. He did, *sub modo*; but the court should have been told of

this sort of publication to guide our discretion upon the circumstances of the publication, with respect to what we were to do; if he did confess it, it is equivocally laid before us: for if we had been told it was only given to the governors for redress; that upon the application of those that applied for the rule, the governors had taken it up, and it was then depending before them, and a report made by the committee, it would have been worth consideration, whether the court would have made any rule at all. And this notice in the affidavit, with regard to the committee, is all artfully put; for it artfully leads one to understand the question is another thing; and they leave the excuse for not coming sooner; but the stronger part of the case is this; they tell you they did not know of the report. It cannot be supposed they did not know of the report.

Mr. *Morgan*. My lord, they did not know of the report.

Earl of *Mansfield*. Sit down—I don't take the information. No man of them but must know the opinion of the board. If what you say is true, many articles are not proved, and others are proved against the affidavits. Could any body not know the general tendency of the report? If they did not know it in the words (besides it bears date the 6th of August) they must know the general tendency, and they must know, from the nature of the report, it was impossible for the court of governors, upon that report, not to do, at least, what they have done; they would have been warranted to have done more.

As to the appointing this committee, I see no imputation whatsoever; none; for Mr. Baillie in his own affidavit says, that many of the directors were worthy, honourable, respectable men; and his only objection is, they did not attend. Why? That is the case we all know of many very worthy respectable men that are governors of many hospitals in this city, and trustees in many public charities; from other business they cannot always attend. They don't look upon that as a failure in their duty; they leave it to others, unless they are particularly called upon to act as directors. The only objection is, they did not attend.

Such a general charge would not prevent any man that did come and attend upon the investigation to do his duty that day; and there is not one, by the book, upon whom there is the least charge or imputation thrown; not one, as appears by the affidavit of the defendant, which is very strong, considering the asperity and warmth of those affidavits, in which, they have behaved not very judiciously upon this occasion, for the less warmth that appears upon these occasions the better. But they have thought proper to introduce a great deal of warmth into them.

There is not one upon which there is any objection thrown out except Mr. Barker; not one of the counsel have thrown out any ob-

jection to any of the committee except Mr. Barker; and, I think, they complain, sir Meyrick Burrell did not attend but once; and Mr. Cust was absent but once (that is the last day) but there is no other imputation on their proceedings.

Then such a committee, sitting seven days, report, they heard all that he could offer; they go through an examination of every officer charged by him, and into every particular; they go through the indecency of his behaviour before them (which was highly improper; he should have complained in a proper way) and, having gone through all that, it was laid before the general court.

I agree with Mr. Lee, it was impossible the general court should not animadvert upon it, if that report is true; and if it was true, they could not do otherwise than censure any man that appeared in the light of a groundless calumniator of all those people.

Then how does that agree with this application? You came with this report, which is to be the foundation of a farther proceeding, at the instant you were seeking redress from them.

If you had said, we proceed before the governors, and mean to have him censured by the governors, he being the subject of their jurisdiction, the court would never have granted an information.

A case not unsimilar, occurs now this moment. Suppose a fellow of a college, in application to a visitor, libels the whole society, and they complain to the visitor of that libel; and the visitor is of opinion, though in the shape of a complaint, it is an infamous, scandalous, groundless calumny, and he expels him for it, and the fellows come to this court for an information, would they grant it? Certainly not.

The expulsion was the proper punishment for members of such societies, as they suffer in the capacity in which they commit the injury.

He has injured, as lieutenant-governor, his fellow members of the society; it comes before all the members; they think proper to punish him; that is the proper judicature.

Then it was wrong in them to suppress this ground. It was wrong in them to come till the censure was past. And the moment they had him punished in this way, they should have given notice and dropped the information.

Upon that ground, independent of any other, I am of opinion, this rule should be discharged, and discharged with costs.*

* That is, about one half of the expence actually incurred. *Orig. Ed.*—In 2 Espinasse's *Nisi Prius*, p. 10, is a very short note of this case. See also Mr. George's *Treatise on the offence of Libel*, chapter 4, "on the motive to the act which must have been committed with regard to the libel."

PROCEEDINGS

IN THE

HOUSE OF LORDS,

UPON AN ENQUIRY INTO THE ABUSES AND MISMANAGEMENT OF THE ROYAL HOSPITAL FOR SEAMEN AT GREENWICH.*

On Thursday, March 11, 1779, certain papers relating to Greenwich Hospital, which had been moved for by the duke of Richmond, were presented: whereupon his grace, in a speech of some length, stated certain abuses, which, according to captain Baillie's account, existed in the management and conduct of the Hospital; and particularly,

1. The leaving out essential words and whole passages in the charter, and adding new powers and authorities, without the knowledge, privity, or consent of a general court of governors.

2. The violation of the original institution, by the appointment of officers in the Hospital, who are not seafaring men.

3. The appointment of such officers in the council of the house to govern seamen, of whose disposition, temper, and manners, they were totally ignorant.

4. The admission of a number of clerks, deputies, and servants, who are not seafaring men, into apartments in the Hospital, and some of them into the wards of the pensioners.

5. That the directors have given fresh contracts to Peter Mellish, the contracting butcher, who had been convicted of fraud; that whilst another action was pending, they gave him a second contract, and a third contract, after they had compounded fifty other fraudulent breaches for 100*l*.

6. That money, instead of provisions, is given by the directors to above 1,000 pensioners, which encourages drunkenness and disorder in the Hospital.

7. That this matter had been represented as an abuse, by the unanimous consent of the council of the House, to the directors, without effect.

8. That money arising from such savings, in giving less money than the value of the provisions, together with the mulcts and checks upon the pensioners, create a fund, called the Charity Stock, out of which additional salaries are given to various civil officers, who have votes in laying on those mulcts.

9. That in many parts of the clothing, such as shoes, stockings, linen, beds, washing, &c. there are great abuses.

10. That the provisions have been frequently represented by the council to the

* From the 'Solemn Appeal,' &c.

board of directors to be bad, by the malpractices of the receiving officers and of the contractors, without proper attention on the part of the directors.

11. That the beer in particular has been found so bad, as to oblige the council at one time to start 4,000 gallons, as unfit for use, to prevent its being served to the men, without any punishment being inflicted on the brewer, or any of the civil officers, whose duty it was to superintend the brewery.

12. That the directors have given 1,000*l.* by private agreement for cleaning the pictures in the Painted Hall, without advertising for proposals by contract, in order to ascertain the value of that public work.

13. That the danger of fire, for want of better regulation, has not been attended to, by which neglect a most dreadful misfortune has happened, whereby the Hospital will not be enabled, in this moment of war, to provide for so many pensioners, as with proper precaution it might have done, besides the great inconvenience brought upon the pensioners, and expence to the Hospital.

Other noble lords spoke; after which, the House adjourned till the next day.

On Friday the 12th of March, the Lords met again, and the order of the day being read for the House to resolve itself into a committee, the Lord Chancellor left the woolsack, and lord Scarsdale took the chair, a great number of papers, which had been presented relative to the subject, were read.

The E. of *Sandwich* then rose, and said, as he had found himself mistaken in a particular to which he had spoken the preceding day, he begged leave to take the opportunity of that full House to recal his assertion. The noble duke, in his opening speech, had mentioned the negotiation between captain Baillie's counsel and the Admiralty, and in his reply he had declared that the negotiation took place subsequent to captain Baillie's dismissal; the fact, he recollected, happened prior to Mr. Baillie's dismissal from his office of lieutenant-governor; the error, his lordship declared, arose merely from forgetfulness, and as he, upon recollection, found he was wrong, he thought it incumbent upon him, as well out of respect to their lordships, as in point of candour and truth, to acknowledge it, in order that an improper idea might not be entertained, either as to his attempting to charge the noble duke with having stated a false fact, or that he should rest any part of his reply to the matters of charge, which might come out in the course of the enquiry, upon false grounds.

The Duke of *Richmond* agreed, that it was perfectly fair for the noble lord, upon his better recollection to recal any of his assertions, and also that it was extremely candid to do it in so early a stage of the business; he only wished their lordships to remember, that upon the contradiction of the assertion relative to

the negotiation with captain Baillie's counsel, the noble lord had built an inference, and an argument which extended a great way, he having flatly and directly said, that one assertion was false, it was very natural to imagine, might induce their lordships to conclude, that all or most of the rest were equally false, which he had also asserted; but as the noble lord had now called to mind the real state of the negotiation, and acknowledged it; for as the latter grew out of the former, they ought certainly to fall together, and the one to be given up as well as the other.

His grace said, he was at a loss in what manner to proceed, as to the discussion of the several articles of enquiry, which was, in fact, their true name, as they were not matters of charge, but matters of parliamentary enquiry. He declared, he was perfectly indifferent as to the mode of proceeding, and submitted it to their lordships, whether it should be, by dividing the articles, and entering upon an examination of evidence, in defence of each separately, concluding entirely, and determining upon one before another was begun, or by hearing evidence generally to the whole, and drawing an ultimate conclusion from the evidence at large. His only wish was to adopt that line and rule of procedure, which should tend best to render the enquiry short, clear, certain, easy to comprehend, and conclusive.

This candid appeal to the committee gave rise to a warm debate, which lasted above an hour. The Lord Chancellor, the dukes of Richmond and Grafton, lord Camden, lord Mansfield, and lord Ravensworth, taking a part in it.

The Lord Chancellor and lord Mansfield contended, that the proper mode of proceeding would be to hear the whole evidence to the whole charge, (for a charge in effect it was, though the noble duke did not urge it as a matter of accusation); then for the noble lord on behalf of himself, or any person he might think affected by what came out in the course of the enquiry, to state his defence, and that their lordships would by such a mode of procedure be best enabled to judge of the entire matter.

Lord Camden, the duke of Grafton, lord Ravensworth, and the duke of Richmond, were of a different opinion. They thought it would be an endless matter to go generally into evidence, contending that perspicuity, and an endeavour to render the evidence on each point comprehensible to every capacity, and impressive on every memory, were certainly the principal objects to be desired. That if one article was not concluded upon, and finally disposed of before a second was begun to be enquired into, the enquiry might last for ever; that the minds of the noble lords in general would be perplexed, and it would be absolutely impossible either to discriminate the nature, or the degree of evidence adduced, in support of one article, or in

any shape whatever, to decide with truth and precision upon the whole.

In the course of this debate,

Lord *Mansfield* said, that the impending enquiry had been brought in by a noble duke, who had very candidly declared, that he took it up merely upon public grounds; that the noble duke had further acknowledged, that he did not pretend to say the assertions were founded, or to vouch for the truth of any one of them, but that he thought they were of sufficient importance to call for a parliamentary examination. His lordship went on to declare, that as a material part of the object arose from captain Baillie's book, which contained a variety of aggravated charges of abuse of the charter of the Hospital, and of mismanagement in different shapes, which tended to affect and criminate many persons who were absent, though chiefly centering in an accusation on a noble lord who had a seat in that House, he did not doubt but their lordships would take care of the absent parties, and regard them as men accused and unheard, and that in the whole proceeding of the enquiry, they would conduct the business with candour and fairness respecting the noble person who was a member of the house, which, he contended, they could not do without hearing the whole of the evidence respecting every part of the object of enquiry, since their ultimate conclusion must necessarily be general, and consequently be founded on the totality of the matter adduced in evidence, both in support of the charges, and in defence of the parties accused.

In reply to this,

Lord *Camden* protested against any idea of the present enquiry being founded on a personal attack, and hoped that no noble lord would consider it in so odious and prejudicial a point of view; he solemnly disclaimed every suggestion or intention of attack on any man, or any set of men, declaring, that the only motive which weighed with him, and induced him to take a part in the enquiry, was the public good, and an ardent desire, at this critical moment, to convince those brave and gallant men, the navy officers and seamen of England, on whose courage and activity this country depended for safety and prosperity, that the noblest foundation in the world, a foundation which did the utmost honour to Great Britain, was attentively regarded and watched by parliament with a jealous eye, as the nation's great man of war, as an asylum for disabled seamen, and for such only as had purchased it by their blood, by their services, and by the contributions they had paid; that it was the business of parliament to defend and protect them, and to prevent every abuse in the management of it, in order that it should be a place of rest, fit to receive them and their successors, the pillow on which they were to repose, after their danger, toil, and care, in defence of the public; in fact, that this place of retirement, which they regarded

as their last port, as their only haven of comfort, happiness, and peace, ought to be preserved for them, and them only, with every enjoyment and advantage deducible from its original constitution.

The Duke of *Richmond* professed himself much hurt at what had fallen from the noble and learned law lord. He begged again and again, that it might be considered he meant no personal accusation, that he brought no charge, nor wished to criminate either the noble lord at the head of the Admiralty, or any other person. The noble and learned lord had hurt him still more, by suggesting that he had brought a charge against absent persons. God forbid, that he should ever accuse men who were not present, or who could not make their defence! much more ashamed should he be to attempt to draw any conclusions of a criminating nature against those who were absent. In his opening speech, he had expressly declared, that all the various matters which he had stated, arose from *ex parte* evidence, and that he did not lay them down as facts, which he undertook to prove. He was perfectly indifferent as to the issue of the enquiry; convinced, however, as he was, that the subject of it was sufficiently important to require parliamentary examination, he should certainly proceed, but he again submitted it to their lordships' consideration, which would be the best mode of receiving the evidence.

Lord *Mansfield*, in reply, said, the noble duke had certainly been looking over some papers, or had his thoughts otherwise so much engaged when he had spoken, that he did not hear him distinctly. Nothing could be farther from his meaning, than the idea the noble duke had revolted at, and nothing could be stronger in expression, than the words he had used, respecting the nature of the enquiry, and the candid manner in which the noble duke had brought it forward. His lordship repeated his words, and shewed that he had not uttered a syllable, which led to an insinuation of the charge being personally levelled, or that the noble duke meant to criminate absent persons.

At length the Committee proceeded to examine witnesses, who being all previously sworn,

Captain *Baillie*, the late Lieutenant Governor, was called in.

Please to inform the committee whether you have read the new charter?—I have.

Have you read the old commission?—I have.

Have you compared the old commission with the new charter?—I have compared them.

Is there any difference between them?—There are a great many alterations and additions which are very material, in my humble judgment.

Do you know who prepared the charter?—I believe it was prepared by Mr. Ibbetson, the secretary to the directors of the Hospital and general court of governors and commissioners.

Was the charter ever read at a general court that you know of?—When it was produced at a general court at the Admiralty, in order to be read, lord Sandwich was pleased to say he thought the reading unnecessary, as it was a mere copy of the old commission, except some alterations in point of form.

Was the charter then sealed, or was it the draught of the charter?—It was the charter.

Was the great seal to it?—I believe it was.

Was any draught of that charter laid before the general court previous to its being sealed with the great seal?—I don't know that there was; there was a rough draught of it brought to the board of directors.

Have you constantly attended the general courts?—I generally attended very constantly.

You don't recollect that any draught of the charter was produced at a general court, previous to the great seal being affixed to it?—I don't recollect that there was.

Was it before the court of directors that you spoke of the rough draught being produced?—Yes, I really don't recollect the particulars of it, but I did not understand then that there were any alterations, additions, or omissions, from the original commission.

Who produced that draught?—I believe the auditor or the secretary, I am not sure which.

Upon what occasion was the charter read before the general court?—It was not read at all in my hearing.

With what view was it attempted to be read?—I have said it was supposed unnecessary to read it; that it was a mere copy of the old commissions, some alterations only in point of form, on account of the incorporating of the governors and commissioners.

When you found that there were some material alterations, did you ever represent that as a grievance, and a thing that ought not to have been?—I never knew that there were any alterations till the charter had passed the great seal, and then I compared the old commissions with the charter, and found very essential alterations. I beg your lordships to understand that the charter was not entirely read, only some particular parts of it, at the desire of capt. Hood, the treasurer, who found himself aggrieved by leaving out part of his titles; Receiver General was left out, which he thought affected him, otherwise, I believe, no part of it had been read at all.

Captain Baillie said, if I understand him, that he believed the charter was prepared by Mr. Ibbetson; does captain Baillie know of no other person employed besides him?—Mr. Ibbetson is secretary; we have no other to the Hospital, to the board of directors, and the general court of governors and commissioners.

What reason have you to believe it was prepared by him?—Because he does all the

business of Greenwich Hospital, as far as comes under my knowledge, as far as I know in that line.

Did you never hear of this charter being laid before and prepared by any eminent counsel?—I have heard that it was to be referred to the attorney and solicitor general; I did hear that mentioned, that it lay some time with them, after it was drawn up.

Had the solicitor to the Hospital any hand in preparing it?—I don't know that he had. [Capt. Baillie withdrew.]

Mr. Ibbetson (Secretary to the Directors of Greenwich Hospital) called in.

Please to give an account to the House of what you know of the new charter; how it was prepared; by whom it was planned; who shewn to; and what steps it went through?—It was originally proposed by Mr. Eden, the auditor, the having a charter for incorporating Greenwich Hospital. The solicitor for Greenwich Hospital was directed, with the assistance of Mr. Eden, to prepare the draught of a charter to be laid before the attorney and solicitor general; a draught of a charter was accordingly prepared. First of all there was an opinion taken from the attorney and solicitor-general, and Mr. Eden's opinion of the necessity and expediency of having a charter for Greenwich Hospital. They gave their opinion, that it was expedient and necessary; a draught of a charter was ordered to be prepared, with the assistance of Mr. Eden, and to be laid before the attorney and solicitor-general; by them it was settled; it was brought before the board of directors as settled by the attorney and solicitor-general; the board thought it would be necessary to add a clause to it, with respect to the treasurer, and other people concerned in the receipt of money for Greenwich Hospital giving security; that was proposed, laid before the attorney and solicitor-general, and with that amendment the charter passed the great-seal.

When that was laid before the general court, was it then sealed?—Yes, it was sealed; it came perfect; the charter itself under the seal was brought to the general court, and was laid before the general court. It was not all of it read.

What general court was it this charter was laid before?—The general court immediately after the date of it, in December, 1775, I think—I can refer to the books.

Have you the minutes of that general court here?—I have.

Please to read them.

[The witness produced the minutes, and read an entry purporting that the new charter was presented to a general court, on Saturday the 16th of December, 1775, and that as the new charter omitted to stile the treasurer 'receiver general,' which title he had in the old commission, the treasurer being present, expressed his doubts whether an omission of the last mentioned title might not affect the powers

of his office; upon which the general court ordered, that a case be stated, and laid before the attorney and solicitor general, if the treasurer, upon further consideration, should think the same necessary.]

What was done in consequence of that?—At a subsequent general court, held on the 16th of February following, the governor acquainted the court, that the charter had been altered in the presence of his majesty, by adding the words "Receiver General" to the treasurer's title, as expressed in his patent and the old commission.

Then am I to understand that this charter was never laid before the general court till it had passed the great seal?—I am not prepared to speak to that immediately: I don't think it was; but I can refer to that. (The witness refers to the Minute-book.) It does not appear to have been laid before the general court.

Not any draught of it previous to passing the great seal?—No.

When it was laid before the general court, after having passed the great seal, what was the notice to persons to attend that general court?—What number of persons were summoned?—The governors and commissioners that had usually been summoned were summoned upon that occasion; there was no extraordinary summons.

Who are usually summoned?—The lords of the Admiralty, the secretary at war, the treasurer of the navy, the commissioners of the navy, and the lieutenant-governor, the auditor and the directors of Greenwich Hospital, and the deputy master of the Trinity-house. The deputy-master of the Trinity-house, in the last summons was one of the directors.

Has it been usual when there has been extraordinary business come before the Hospital to summon nobody else?—I never remember but one instance of it.

What was that instance?—It was upon the appointment of a receiver to the Derwentwater estate.

Who was at the head of the Admiralty at that time?—Lord Egmont.

Upon that occasion who was summoned?—The greatest part of the commissioners were summoned upon that occasion; I cannot exactly state them; except the princes of the blood, I believe almost the whole commission were summoned.

But upon this occasion of a new charter being laid before them, there were no more summoned than ordinary?—The summonses went in the usual way; I received no directions.

When that charter was read before the general court, was it read distinctly, article by article, or only parts of it?—A very small part of it was read.

Was it intimated that there were but few alterations, or was any notice taken of any material alterations?—There was no notice

taken at that time but of the omission of part of the treasurer's title, which was observed, as I have already mentioned.

Did any body state there was any material alteration?—I don't remember that there was.

Was there any thing said that there was not any material alteration?—I don't recollect that any thing of that sort passed. It had been laid before the attorney and solicitor-general; I imagine it was supposed to be right.

How did the treasurer know that his titles were left out?—I don't know.

You said it was not read?—Probably from the draught of it, as settled, having been read to the board of directors.

When was it read to the board of directors?—(The witness refers to some minutes.) On the 12th of January, 1774, "a draught of a charter, as settled by the attorney and solicitor-general, laid before the board."

I understood you to say that the solicitor and Mr. Eden were directed to prepare a draught of a charter?—Yes, to be laid before the attorney and solicitor-general.

Who gave those directions?—The board of directors.

Were they the only persons who gave the orders for the charter being prepared?—Yes.

Who was consulted in drawing up the charter?—It was upon the proposition of Mr. Eden, who at that time was auditor and counsel to the Hospital. In the case of Mr. Ellis, a former steward, there had been a deficiency; there was some difficulty how he was to be prosecuted; this suggested an idea that it would be necessary to have a charter to give powers to that body, as well to sue as for other purposes, and the commissioners having all along directed that a charter should be prepared.

I meant to ask who were those persons that instructed Mr. Eden, and the solicitor, in what manner they were to make out that draught?—There were no instructions given at all; the solicitor was to prepare a charter, with the assistance of Mr. Eden, and having so prepared it, it was to be laid before the attorney and solicitor-general.

Do you know how it came to pass that Mr. Eden and the solicitor, of themselves, thought fit to make any material alterations between that and the old commission?—I know nothing respecting the preparation of the charter, though I am charged with it, than merely its passing the board.

If you don't know who suggested these alterations, or advised them, then I have nothing to ask you?—I do not. The solicitor is here, probably he may be able to answer that question.

How long is it since the treasurer of the Hospital was required to give security?—This very charter requires it. There was a clause added; I mentioned that to the House before.

Do you know whether since that security was required, there has been a greater sum of

money lodged in the treasurer's hands?—Upon my word, I am not able to speak to that point.

Do you not know that the treasurer has received much less since the security, which I apprehend to be 10,000*l.*?—Yes, it is.

Whether he has not received much less since that time than before?—He has had less than 10,000*l.* since.

How much?—Six thousand pounds less.

How were the prosecutions, respecting the Hospital, carried on before the new charter? in whose name?—The solicitor will be more able to speak to that than I can; but in the case which occasioned the taking up the business of the charter, Mr. Ellis's case, there was some difficulty how to proceed. There was one opinion, that it was right to proceed by an *assumpsit*; another opinion, that an information should be filed in chancery, by the attorney-general, and that was directed, but there was some difficulty about it; and from that and other things, it was thought necessary to get a new charter. It had been attempted in several reigns; I traced it almost ready to pass the great seals, and then it was stopped.

By whom were those difficulties made; in what court, or in any court?—I only said I traced the charter having been prepared: I saw letters in the books of the Admiralty to the attorney-general, pressing him to expedite the charter, in queen Anne's and king George the first's time; no less than two or three charters had been in a state of preparation, and then they died away, and we cannot trace what stopped them.

Then you do not recollect any prosecutions, and persons transported under prosecutions, in the name of the directors, under the old commission?—There have undoubtedly been prosecutions, but the solicitor can explain that better.

I think you stated, that there were directions from the board of directors to the solicitor, and Mr. Eden, to prepare this charter?—Yes.

Do those directions appear upon the minutes of the court of directors?—Yes, they are here. (Refers to the Minute-book.) I will, if you please, read a minute immediately preceding it, respecting Mr. Ellis. "On the 26th of February, 1772, The solicitor laid before the board Mr. Eden's opinion, in regard to the method proper to be taken for recovering from Ellis the balance due from him to the Hospital; he advises an *assumpsit*, though he could not be certain of success. The solicitor was directed to take the attorney-general's opinion upon the matter; Mr. Eden having reported upon the above occasion, that he thinks the want of incorporation a considerable defect in the constitution of the Hospital, &c. Resolved, that the same be submitted to the consideration of the next court.

"On the 11th of March, 1772, the solicitor laid before the board a case, respecting the incorporating the Hospital, with the opinion of the attorney and solicitor-general, and Mr.

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Eden, thereupon, by which it appears, that they think it on many accounts expedient, and even necessary; and that a charter of incorporation should be prepared for that purpose, as recommended by the king's commission. Ordered, that the solicitor do, with the advice of Mr. Eden, prepare a draught for that purpose, and lay the same before the attorney and solicitor-general to settle."

Before what court?—The court; the board of directors.

The first, I think, you mentioned, was at a general court?—The general court, in the first stage of this business, went to parliament, with a petition for a charter by act of parliament.

What I want to know is, what the direction is, whether it was a general court, or a court of directors, that gave directions to Mr. Eden and the solicitor to prepare the charter?—That I have just read of the 11th of March, and that charter, as settled by the attorney and solicitor-general, was laid before the board of directors on the 12th of July, 1774, and then they proposed the addition to it of the securities.

Then that draught, as laid before the directors, was that draught with the alterations, the same as the charter now stands, except in the case of captain Hood?—I cannot charge my memory; I suppose no alterations were made in it after, except the security clause; but the solicitor is the person I must refer your lordships to upon this occasion.

You had no hand in drawing the charter?—No; I had no hand in it, but what appears upon the face of the minutes; I never saw the draught of the charter, except when it was read to the board of directors; I never saw it in the interval of its preparation.

[Mr. Ibbetson withdrew.]

Mr. *Everest* (the Solicitor to the Hospital) called in.

Give an account to the House of what you know relative to the new charter.—To the best of my recollection, I received no other directions, than what I received from the secretary, and those in writing.

Have you a copy of those directions that you received in writing?—I have not a copy of them by me at present.

Do you recollect the substance of them?—I do not.

Do you recollect whether there were any directions to make any alterations in the charter from the old commission?—None, that I know of.

Then what did you do in consequence of those directions?—In consequence of those directions, some old papers that had been formerly, as I understood, prepared on this occasion, for incorporating the Hospital, were turned to; and from those papers, in which were a draught of a charter, which was intended to have been passed, as I understood at that

time, and from the commission the present charter was drawn.

Acquaint the House if you received no directions from any body to make any alterations in the charter, how you came to make any alterations.—I cannot immediately satisfy your lordships how I came to make those alterations; but your lordships will please to observe, that I had many materials to take this draught from; I had no one line to go by.

Pray, was not the old commission a line to go by?—It was in a great degree, but not totally so.

Is it not like the old commission in a great many respects?—It is so.

Is it not word for word in a great part of it?—I cannot recollect that circumstance.

On what ground did you make the alterations? Did you make them, or any body else?—They might be made by me, but I cannot say whether they were or not; it is a thing I am totally unprepared to give an answer to.

What occasion had you to refer to those old papers? Did any body tell you to refer to them?—I don't recollect that they did.

I thought you said you referred to them?—Certainly I did refer to them.

Who told you to refer to them?—To the best of my recollection, but it is a thing I cannot be positive in, they were taken out of the record-room, in Greenwich Hospital; a place for depositing the Hospital deeds and papers.

What reason had you to go to look in this old record-room for these papers?—I had never drawn a charter before; I wished, therefore, to see what the idea had been; understanding long since, and many times, that there had been such draughts prepared.

When you did make these alterations, did you acquaint any body with having made these alterations?—I don't know that I did; and I so little understood that I was making an improper, or any deviation from what the charter should, or was intended to have been, that I had no idea of acquainting any person of it: there was no line that I could draw the charter by; I took it sometimes from one paper, and sometimes from another, as there were a great variety of them.

Don't you know that there are alterations in this charter from the old one?—Till it was pointed out in Mr. Baillie's book, I did not know it.

Did you not know the Hospital had been governed under a commission from the time of its institution?—Yes, I did.

You did not then refer to the original commission?—I believe, I expressed myself so to your lordships.

Then, if you did refer to it, when you drew this charter, do you mean to say upon your oath, that you did not know that there was any material difference between them?—I did not know that there was any more difference, than what seemed to me to be necessary to constitute a new charter.

Did not you know at that time, that there

was a material difference?—I did not think the old commission to be a direct rule for me; there were many papers.

I understood you, that you did not know that there was any material difference in the charter, till you was apprized of it in captain Baillie's book?—There is a difference; there must be a difference.

Why must there be a difference?—The commission did not make a corporation, there must be words to that purpose.

But is there no difference but that; is the recommendation of the general court of commissioners and governors to the Admiralty, in the appointment of all the offices, left out in the charter, or is it not?—It is left out.

Why was it left out?—I cannot undertake to say why.

Did any body desire you to leave it out?—No, so help me God.

You took it upon yourself?—I cannot answer at this distance of time, whether I took it upon myself, or who took it upon themselves.

I am sure I do not mean to lead you, only I thought the inference fair, when you said nobody directed you, that you took it upon yourself?—I cannot say.

What was your reason for leaving it out?—I had no particular reason for leaving it out.

Is it possible that a man of business can make a material alteration, without having some reason for it; you are here upon your oath, and I insist upon knowing what that reason was?—I do not from my recollection know, that either I did or did not leave it out, nor how it was left out, I protest.

There was also a power of removal of the officers, which was not in the original commission, and which is in the new charter. Is there not?—I believe there is.

How did that happen?—I do not recollect how that happened.

Did any body give you directions to do it?—No, not that I remember, any body.

Did any body else make the alterations, or was it you?—Not that I know of.

Was it you or any body else?—Upon my honour, I do not know, I protest.

Do you know the reason why that alteration was made?—No, I do not.

Do you recollect that there is another alteration in this charter, and the application of the money arising from the charity, being for the uses of the Hospital, is totally left out; do you recollect that?—I do not know how it came to be left out; it is a long while for a person's recollection to go to December, 1775.

The words I mean are these, "And we do hereby, for us, our heirs, and successors, strictly charge and command, enjoin and require, that none of the monies, or other things, which shall be given, contributed, &c. shall be diverted, issued, or applied, or be in any ways applicable to any use or purpose whatsoever, otherwise than to the charitable purposes aforementioned," &c. These words are

left out in the new charter; I desire to know if you left them out?—I do not know.

Do you know whether any body else left them out?—No, I do not.

Do you know why they were left out?—No, I do not know why they were left out.

Then there are some other words which are inserted; these words are inserted in the new charter, "And also to sell, grant, demise, alien, or dispose of the same manors, messuages," &c. Do you know why that power of selling was introduced in the charter, selling the whole estates of the Hospital?—I believe that clause was found in one of the draughts that I had for my guidance; but if your lordships will please to attend to the charter, from the best of my recollection, there is a clause immediately preceding that, which gives the Hospital a power to purchase estates, which I believe they had not by the former commission; it gives them a power to receive devises of manors, messuages, lands, and so on, and immediately, as I think, this clause of which his grace speaks, follows, and it was not, to the best of my memory, then understood, that the clause giving a power to the Hospital to sell the estates, extended any farther than to those they had bought, or such as were devised to them, to the best of my recollection.

You mentioned materials that you had for your guidance, be so good as to mention what they were?—It is almost impossible for me to do that, who have never seen them since.

Where did you take them from?—To the best of my recollection they were taken from the Record-room in Greenwich Hospital.

Who gave them to you?—Your lordships will please to understand, that this Record-room is under four locks and keys; I have the keeping of one of those keys myself; I do not know who gave them to me, but, from the best of my recollection, I had them from that room.

Did you take them yourself, or any body give them to you?—I believe, but I cannot speak certainly to it; I believe that I desired to have them.

Did you return them to that place?—I think they are returned, but I cannot speak positively to that point.

Did you keep any copies of those materials that served you for your guide?—No, not to my recollection.

Your lordships will be pleased, that this gentleman may come another day, and I beg he may bring those papers with him. If you had no authority from any body to make those material alterations, how came you to take upon yourself to make them?—I cannot undertake to say either that I did or did not make them; I drew the charter to the best of my ability, and it was passed by Mr. Eden, and after that went to the Attorney and Solicitor General, and was finally settled.

Do you take upon you to swear that you do not know whether you made any of these material alterations, or who did make them, or

that you received any directions from any person whatever to make any of those alterations?—I do not know that I received any directions from any person, (except, as I said before) from the directors of the Hospital in writing: I considered myself acting under the directions also of Mr. Eden.

Did Mr. Eden give you any directions relative to the alteration that you mentioned?—It is impossible for me to say at this distance of time, but I think not; I do not know.

You swear then you do not know, you do not recollect whether any body gave you any directions, or whether it was you or any body else made them?—I believe I stated, that I had received directions from the board of directors, that I considered myself acting under Mr. Eden.

But did you receive from the board of directors, or Mr. Eden, any directions to make alterations in the charter?—Not that I recollect.

Think a little before you answer the question I am going to ask you, and answer it seriously: I understand that these alterations in the charter were taken by you from certain loose papers that you got out of the Record-room in Greenwich Hospital; it was so, was it?—I believe I informed your lordships, that I had no line to go by upon that occasion; that I had never drawn a charter before; that I had recourse to such papers as I thought would be useful to me; and with them, the best judgment that I could form upon the occasion, and the commission, were the things by which I was guided.

Then in the alterations in the charter, which are not found in the commission, I ask you, if you took those alterations from the old papers that you got out of the Record-room or not?—I cannot undertake to say that I did or did not.

If you did not take them from those papers, from whence else could you have them?—Upon my oath I do not know.

Did Mr. Eden give you any such instructions?—Not that I recollect.

Did any body else whatever give you such orders?—Not that I know of.

Unless you had the authority of these papers, how came you, without such orders, to take upon you to take the appointment of officers out of the general court, and give it to the board of Admiralty?—I do not know at this time what was the occasion of it; or whether it was intended at all, I do not know.

You do not know whether it was intended to be done?—I do not know, my lord.

You will be so good as to inform their lordships, how, as a solicitor, and a very young man, you could undertake, and could justify to yourself, to make material alterations in a charter, from the original commission?—I understood, that I was to draw the charter from such materials as I could get, and from my own judgment about it; I have discharged my conscience about the matter, and I do not know of any directions that were given, any

otherwise than those I have stated to your lordships.

When you carried the charter, to lay it before the Attorney and Solicitor General, did you then apprise those two great lawyers that you had altered several of the points from the original commission?—I did not, to the best of my recollection, take it to the Attorney and Solicitor General; a Mr. Sibthorpe, who was at that time concerned jointly with me, had a great deal of the transaction of that business with the Attorney and Solicitor General.

Do you undertake to say that you did not carry it to the Attorney and Solicitor General?—I do not recollect that perfectly.

As your memory is so extremely short, I imagine it is some days since you have been summoned to attend this House, have you ever had the curiosity, knowing that your memory is so extremely defective, as it appears here, to compare the charter with the original commission?—I have looked at them.

How long ago?—I was looking at them this morning.

How long is it ago since you were summoned to attend this House?—I believe about ten, or positively [qu. possibly] eleven days.

Did you not think it material, when you had had so great a hand, and absolutely the drawing of this charter, not to refresh so short a memory as yours is, with the particular investigation of that charter, and comparing it with the commission before this morning?—No; I have looked at it, but not as comparing it, nor under any idea of giving evidence of it here.

Did you ever take notice to any body, that you had made these alterations in this charter?—Not that I recollect.

At no time did you ever mention it to any body?—Not that I know of.

How long is it since you have been summoned to attend this House?—I think, about ten or eleven days.

Have you had any conversation during that time, respecting the business of Greenwich Hospital?—I have conversed at several times with various officers of the Hospital.

With whom upon this business?—I believe most of the officers; I don't know any one particularly that I have conversed with about it.

Have you conversed upon the subject of the charter?—Not that I know of.

How long have you been the solicitor to Greenwich Hospital?—I was concerned with Mr. Sibthorpe immediately after my father's death, which was ten years ago.

How were you bred? To what business?—An attorney.

How long have you been an attorney?—I was an attorney very soon after my father's death.

We don't know when your father died?—I believe, I explained to your lordships, it was about ten years.

How long have you been appointed solicitor

to the Hospital?—Almost immediately upon my father's death, which is about ten years ago.

Were you an apprentice to any attorney before you was an attorney?—I was clerk to my father.

How long?—Not quite five years, but I served the remainder with Mr. Sibthorpe.

I only wish to ask the witness; he says that this new charter was laid before the Attorney and Solicitor General, I desire to know whether they made any alterations in it, after it was laid before them?—I believe, that the almost, if not entirely, the only alteration made by the Attorney and Solicitor General, was the clause directing security to be taken.

Was the old commission laid before the Attorney and Solicitor General at the same time, with the draught of the new charter?—I don't know.

Who were the Attorney and Solicitor General at that time?—The present Chancellor was Attorney General, and Mr. Wedderburne, Solicitor.

So you don't know whether the Attorney or Solicitor General did know there was any variation made between the new charter and the old commission?—I don't know that any otherwise, than was necessary to constitute a charter; there must be some variation, to be sure.

[The witness was ordered to attend on Monday next, and bring those materials with him, which he made use of in drawing up the charter.]

Whether you singly drew up the charter, or whether Mr. Sibthorpe was concerned with you in drawing it up?—Mr. Sibthorpe and I, to the best of my recollection, drew it together.

He was concerned with you in drawing of it?—Yes, he was.

I think you say, Sibthorpe and you together drew it?—Yes, I think so.

Under the direction of Mr. Eden?—Yes.

You recollect that was the case, do you?—Yes, perfectly.

I suppose, after you had drawn this charter, you delivered it to Mr. Eden for his perusal?—It was laid before Mr. Eden for his perusal.

When you laid it before him, did not you observe to him, that you had made these essential alterations?—I cannot recollect, whether I or Mr. Sibthorpe laid it before him.

Did Mr. Eden make any alterations?—I cannot recollect.

Mr. Ibbetson called in again.

Mr. Ibb. In the hurry of looking over the minutes at the bar, I did omit one which I should have taken notice of; I did mention to the House, that there had been an application from the general court to parliament, for an act of parliament to incorporate the Hospital, that did not take place; and, I find, upon looking over the minutes, since I withdrew

from the bar, that the draught of the charter had been settled by the Attorney and Solicitor General, with the addition of the security clause, was laid before the general court, and that was on the 10th of March, 1774. The directors in their Memorial to that general court say, thus: that having laid before the Attorney and Solicitor General, a draught of a charter of incorporation for the Hospital, &c. and having added, according to their recommendation, a clause for the treasurer to give security, the resolution of the general court was, that they approved of the draught of the new charter.

Who were present at that time?—Lord Sandwich, Mr. Buller, lord Palmerston, lords of the Admiralty, &c. &c. in the whole fifteen in number.

Was the charter read paragraph by paragraph at the general court?—The draught of the charter appears to have been read through; I recollect very well, that the charter itself was not read.

You say it appears, that the draught was read through, it may be entered as read, it may appear so upon the books; but were you present at the general court?—I don't recollect that it was not read; and I am very well convinced, in my own mind, that the draught was read, but that the charter itself was not read, any more than sometimes as your lordships' bills are read, just the title of it.

Please to recollect, and will you take upon you to say that it was read?—I think I can venture to say it, but I will not say it positively, but I have no reason to think that it was not read.

Do you take upon you to say positively that it was or was not?—I believe it was read, I know nothing to the contrary.

Whether it was not one of the points of business, upon which they met to consider of this draught?—It was a part of the business of the day, it came in among other business.

Was this draught of the charter, to the best of your knowledge, read to the general court?—To the best of my knowledge and belief, certainly it was read.

Were any of these alterations between the commission and charter, pointed out to the general court at that time?—No, there was nothing pointed out in it, that I recollect.

Was the commission produced at that court, and read?—No, it was not, nor any comparison made between them.

Did no member there take notice of any alteration between one and the other?—Not that I recollect; and I cannot see how they could, unless they had had them both before them?

How soon did you observe, or were you acquainted with the alterations in the charter?—I never knew any thing of the alterations myself in the charter; I never compared it with the commission; I concluded it was properly settled, having gone through such hands; till Mr. Baillie pointed them out in

his book, no other alteration than the security clause, that was an addition as it stands upon the books, as recommended to be inserted.

[Mr. Ibbetson withdrew, and the House adjourned to Monday.]

Mr. Everest, the Solicitor, called in.

Have you brought those papers that were ordered?—I have. [Produces some Papers.]

What are these papers?—The several draughts and copies of charters, that I have been able to collect since last Friday.

That you have been able to collect?—Yes.

When were those draughts and papers made out?—The first was drawn by myself; was corrected, as I find afterwards, by Mr. Sibthorpe, who was then joint solicitor of the Hospital with me; a copy was made from that, and laid before Mr. Eden, and corrected by him after that; three copies were made, one for the Attorney General, one for the Solicitor General, and another for Mr. Eden.

Are those all the papers that you have produced?—I was going on, if the Committee will give me leave: the Attorney and Solicitor General advised, by an opinion in writing at the end of one of them, that a clause should be added for the treasurer to give security; this was laid before the board of directors, and they ordered the clause to be drawn; accordingly a copy was then made for the board, with the clause inserted; I find, by the minutes of the board, that it was then laid before the board, and they made alterations in it; from thence another copy was made for the general court, and by them finally approved.

Are these all the papers?—I have not them all.

Are those that you have been describing all the papers you have brought with you?—I will read their titles.

Are they, or are they not, all you have brought with you?—I have not brought all I have been describing, because I could not find them all; what I have brought is the first draught which I drew myself, and which was corrected by Mr. Sibthorpe; that was afterwards corrected by Mr. Eden, and then the third draught was corrected by the Attorney and Solicitor General, and Mr. Eden.

Have you any papers but what you have produced?—None, but what I have produced.

Have you searched into the record-room, and made any enquiry concerning these old papers and draughts you spoke of the other day?—I have been into the record-room and searched there; I found that the papers were not there, but in my possession, and I have now delivered them to your lordships.

Were there any other alterations ever made in the draught of the charter, but those you have mentioned?—No.

Did you ever converse with any body else, but those that you have named, upon the drawing of the charter, to [qu. with] my lord Sandwich, or any of the lords of the Admiralty?—No.

Nor receive any message upon the subject from any body?—None.

Was Mr. Ibbetson concerned in drawing up that charter?—Not by any means.

What was the expence of the charter?—I have not taken that out.

Do you know how much you have received upon that account?—Upon account of the charter?

Upon account of the expence of passing it?—I am not prepared at present to answer that question, but I believe it was upwards of a thousand pounds: if the House have any wish to go into that, I will, upon another day, produce all the papers I can respecting that.

When did you propose to return those papers that belonged to the record-room?—I had not fixed any time in my own mind about it; I really thought they were returned; it has been a long time since I have seen any thing of them.

Have you compared any of those old papers since you were here on Friday with the present charter, to see whether the alterations in this new charter are contained in these old papers?—Some of them are in the old draught of a charter in George the 2nd's time, which I have delivered to your lordships.

Is that part contained in that old paper, which gives authority to the lords of the Admiralty to sell the Hospital land?—I don't know.

That charter never passed, did it?—No.

[Mr. Everest withdrew.]

The Auditor, Mr. *Eden*,* called in.

Please to give the Committee an account of what you know relative to the passing the new charter of Greenwich Hospital?—In the beginning of the year 1772, Mr. Ellis, the steward of the Hospital, failed for a considerable sum of money, I believe about 3,500*l.*; I was at that time at the bar, and acted as counsel for the Hospital; it was my duty to settle the form of recovering this money; I found, on looking into the matter, that it was very difficult to direct a mode of prosecution; and I also found, that if any such mode could be carried on, there were no means of recovering, in case Mr. Ellis's circumstances should be found insolvent; for there had been no security given by him, or indeed any other person, entrusted with the money of the Hospital: it was my duty to represent this to the board of directors; and I pointed out to them, that they were directed under the commission, under which we acted, to have a charter. I knew that under that charter it would be easy to guard against any such inconvenience in future. The board upon this directed that the matter should be considered, I believe, by myself, and the then Attorney and Solicitor General. It was our first wish of all, I believe, to have had this charter passed in parliament. It was moved in parliament,

but the answer was, you had better go to the usual form for it through the crown officers; we don't wish it agitated here. The business of the charter then went on, and several meetings were had about it; I believe about this time, till in the month of March, 1772, that I then gave instructions to the solicitors of the Hospital, Mr. Sibthorpe and Mr. Everest; Mr. Sibthorpe, very eminent in his profession there, and a man we had full confidence in; Mr. Everest was then a very young man; I directed them to prepare a draught for us to look at. They prepared a draught upon the ground of the Foundling Hospital's charter and the commission, taking out as much of the commission as they thought applied for the benefit of the Hospital; when it came to be put into the charter, I did not know who prepared it, but I now understand Mr. Everest did; Mr. Sibthorpe corrected it, and brought it so corrected to me. This don't carry me, I believe, later down than the month of March; I made some corrections, which I understand are now before the House, and which may be seen; in making those corrections, I should not have thought it necessary to have retained a single syllable of the commission, if I could have suggested better words; I believe, however, it so happened, that in general the expressions of the old commission are retained, as far as they were proper to be retained. There were several other things occurred in settling that charter, which seemed material to be attended to for the benefit of the Hospital. Hitherto we had a considerable establishment for the benefit of the boys who were sons of seamen. That establishment had not been regularly put under the establishment of the Hospital; it arose from, and was supported by, some contingent sum. The boys go off in three years tolerably completed in their education. This was grown so considerable an establishment, that it seemed material to subject that to a general court, and the general form that goes through the rest of the regular business that is inserted in the charter, not in the former commission; so all the security clauses of those that have the Hospital money pass through their hands, were submitted for the opinion of the Attorney and Solicitor General, and they gave their opinion that it was necessary to insert such a clause: that is a considerable benefit to the Hospital, as at all times there is at least 50,000*l.* or 60,000*l.* in circulation, for which the Hospital before had no security, and for which it has now a full security. There were some provisions put into the charter about the power of altering and disposing of the Hospital's lands, which I hear has drawn some attention. As far as I can recollect of the matter, I apprehend that no such power of aliening or disposing of any thing is given by these words: I conceive them to be mere words of form, so far as relates to any possibility of impairing the property of the Hospital: I conceive that every purchaser takes,

* Now [A. D. 1814.] Lord Auckland.

subject to that trust, and at his own peril; so far as those words give a power of purchasing, I don't know, I rather apprehend they do not; for in cases subsequent, I understand it has been found necessary to have special licences from the crown to make those purchases; and in regard to exchanges, it happened two years ago, when there was an exchange, and then it was found necessary to pass an act for that purpose, which act actually passed.

I have not looked into the thing, because the House did not give me notice that I was to be summoned here; I heard it by accident; I have not had much time to look into it; but, I believe, that upon looking into the acts, which vest the Derwentwater estates in the Hospital, it will be found, that no charter of the king's alone can turn and affect that, exclusive of the nature of the trust, by which any purchaser might be subject to the trust; I do not at this moment recollect any other variations in the charter. There is an omission, which has been taken notice of: the general courts recommending the persons proper to be admitted; the words that were in the old commission were, I believe, pretty nearly these, that the commissioners, meaning the general court, shall recommend to the board of Admiralty, to appoint officers necessary for the Hospital. Now I can only suppose what I did then think; by what I think now upon it, it can only have one of two meanings, either that I must have thought at that time, that the commissioners were meant to recommend the persons, so that they must be appointed; in which case I should have had no hesitation of striking it out, because I am clearly of opinion, it is a much better trust to be in the hands of the board of Admiralty, who must know the merits of seamen who have served, than in the hands of persons very respectable in life, but not seamen. I understand this is an old clause, from the first institution of the Hospital; and I conceive that the words meant, that the commissioners should recommend all officers necessary to be appointed; so many captains, so many lieutenants, and so on; but that the board of Admiralty are to name the particular captains and lieutenants. There is a clause too, giving the Admiralty power to displace. Now, as far as that addition goes, I believe, it restrains the power of the Admiralty: the Admiralty used to appoint, and do now, indeed, till further order; what I must have thought was this, that this is rather a hard tenure upon an old officer in the Hospital, that he should hold it during the will of the board of Admiralty, whatever his behaviour was; therefore, I inserted, I think, they should have power to displace for misbehaviour. There were some other words, that the revenue of the Hospital should be applied to the purposes of the charity, and no other purposes whatever; I don't recollect (it will appear) whether I scratched out the words; if I did, I am not ashamed of it, because they are words that mean nothing;

and, at this instant, if applied to any purposes, except the purposes of the charity, they are punishable. I don't know whether I have answered the noble lord's question, but I don't recollect any thing more at present.

Whether the committee is to understand from what you have said, that these several alterations in the charter were made by yourself?—Upon my word that is a very hard question to answer; I have not seen the paper, except casting my eyes upon them in the bundle; I have not seen them to examine them, therefore I cannot tell; at the distance of seven years, it is impossible for me to know. If any body will take the trouble to examine them, my hand-writing is very easy to be seen, whether I altered them or no; I apprehend I am responsible for every word that is in this charter.

I don't mean whether you are answerable for it or not; but I want to know the fact, whether you made the alterations or not; if you wish to satisfy yourself, by looking into the draught that is laid before the House, that may easily be handed up to you, to refresh your memory?—If you will please to let me see the draught, I will tell your lordships.

(The draught is handed to Mr. Eden.)

Mr. *Eden*. I certainly did not alter every thing, because I see in the Attorney General's brief, there are some passages that are altered.

Please to look at the alterations, one by one, and acquaint the committee of what you have altered?—In my brief, there does not happen to be one alteration, which I am surprised at; but, I believe, the reason was, I had quitted the bar before it was brought to me.

Then, from thence, are we to understand, that none of the alterations were made by you?—I am afraid to say that, because the solicitor's having free access to me, many things that may appear to be altered, might be by their asking, and my suggesting alterations: I should mention, that there appears to be a great delay in this business; it was stated in the beginning of the year 1772, and was not completed till the end of the year 1775; in the course of that time it was revised very repeatedly by different persons; and was, I believe, a long time before the Attorney and Solicitor General; they had too much business to give it out of their hands, but at last it did come, though I have sent for their report upon it; it was brought to me from the secretary of state's office, and I have it here, if the House wish to see it.

(It is handed up to the table.)

There were some other persons consulted in this charter, I believe; who were these persons? I understood you to say, it was laid before the Attorney and Solicitor General, and some other persons?—I am misunderstood, I am afraid; I don't recollect any other persons, except Mr. Sibthorpe, the solicitor of the Hospital; I did not mean to say so.

Can you recollect that particular circumstance, of the recommendation being taken from the general court, having been agitated and discussed between you and any other person?—No, I do not indeed; it is very difficult, upon the short notice I have had, to have any recollection of these particulars. I don't know how it happened, but I had not that attention shewn me which is usual; for I had not any notice of it, till I went into the House of Commons to-day; and if I had not been very much disposed to it, I should not have attended, for the House would have interposed respecting it.

You have said, I think, that you look upon yourself as answerable for all these alterations, whether you made them or not, as the draught was laid before you? Do you think that a proper alteration for the recommendation being made to the board of Admiralty, from the general court? you said, that the board of Admiralty were much better judges of the merit of seamen; that though the general court consisted of very respectable persons, yet they were not seamen. Had you it in contemplation, that the general court consisted of all the flag-officers?—I conceive that the seamen have the best guardians of their merits at the board of Admiralty; but there is another objection, which is a very forcible one; that is, that the general court meet at very uncertain times, sometimes at six or seven months distance. Now suppose a captain in Greenwich Hospital dies.

The general court were directed to assemble four times a year, by the commission; by this charter, which you have taken upon you to answer for, they are directed to assemble twice a year; but, I believe, they can at any time assemble a court?—The charter directs them to assemble twice a year; before, they were directed to assemble four times a year; but many things broke through that, and they could not meet upon it.

As you don't recollect at all any one of the alterations, can you take upon you to say, whether they were of your recommending or putting in?—I believe, if they were gone through singly, many, I should vouch for very readily, to the best of my belief.

The draught you have been looking at, is, I presume, the draught in the hand-writing of the Solicitor?—It is.

Was that draught the first you ever saw of this business; had you conversed with the Solicitor, or any other person, upon the subject, before you saw the draught?—At that time I must have conversed very frequently, because I was much at Greenwich, and attended the board very frequently, and must, as I saw the Solicitor there, converse with him frequently.

Then, I should presume, you can recollect whether you were the adviser, or any other person, of those alterations?—I should presume I was the adviser, as I was much more acquainted with the subject than the Attorney

or Solicitor General were, and they being much more employed than I was in other matters.

You still seem to think, that all these alterations might spring originally from yourself?—I think, in the nature of the business, they must have sprung from myself; I think it was more likely the Solicitor would have consulted me about them, than have taken it upon himself, as I was always attentive to it.

Then it was of your own suggestion, to take the power from the general court, and give it to the Admiralty?—I don't think that is done by the charter.

I will read the words of the commission to you, [reads them] "And we do hereby empower and direct you, our said commissioners, or any seven or more of you, to recommend to our commissioners for executing the office of high admiral now, and for the time being; or our high admiral for the time being, to appoint, from time to time, all officers necessary to be employed in and for the said Hospital; and we do hereby empower our commissioners for executing the office of high admiral now, and for the time being, to appoint all such officers accordingly, except the governor and treasurer of the said Hospital, provided, that for the future, all such persons to be so recommended and admitted into the said Hospital, as the officers of the house, or otherwise, be sea-faring men, &c. &c." These are the words of the commission. Do these words import, or do they not, that the general court have the power of recommending all their officers?—I don't know what I thought then, but I now think, that those words do merely mean only this, that the general court was to recommend the officers necessary, that it was to recommend the establishment of the Hospital; because, I believe, that the clause will be found in the original charter, before there was any establishment at all; that is to say, that there should be so many captains, so many boatswains, &c. and that then the Admiralty was to fill them up, by inserting proper officers, those officers being seamen.

The commission says, that the general court are to recommend, and the Admiralty to appoint accordingly, as they are recommended. Now the recommendation, such as it is, is totally omitted here. I desire to know, whether that omission of the recommendation is of your doing and advising, or whether it came from any other quarter?—It certainly must be of my doing, or of my approving.

And from no other quarter whatever?—No; excepting the solicitor of the Hospital, I don't know that ever I consulted any person in my life; and, if it is an allusion, that I consulted with the Admiralty, I must say, very solemnly, that I don't believe that the Admiralty knew of this thing till it was in a great degree of completion; I believe the charter was *verbatim*, as it now stands, before the Admiralty knew of it; and, I believe, there are minutes

in the possession of the Admiralty, if they choose to look to them, that will prove that.

I understood Mr. Everest, the other day, that he took those alterations from certain old papers, from former charters?—Here is a draught of a charter, I believe in the year 1720.

Are any of these alterations suggested in this charter?—I believe, if it is looked at, it will not be found, that this charter, though drawn by able men at the time, followed a single word of the existing commission at the time; I believe the persons that drew it did not think it necessary to adhere to the old charter, but to draw a good charter from them, for which they would be answerable.

If I understood you right, you said, and repeated it just now, that in drawing the new charter, you did not feel yourself bound, or limited in any respect, by the commission?—I certainly meant to draw as good a charter for the Hospital, as I could draw.

Then the charter you looked upon as tantamount to a new constitution of Greenwich Hospital?—I looked upon it, as the instrument which was to give further powers, that were found in the commission to be wanting, and to draw every thing else for the benefit of the Hospital that could possibly be done under that instrument.

Did you feel yourself, in that situation, warranted in drawing and forming a new constitution for Greenwich Hospital, without consulting any of the king's ministers whatever, and particularly those at the head of the naval affairs?—I don't feel that I did draw a new constitution, only that I was drawing improvements to what was existing before, and some essentially necessary.

Did you, or did you not, in respect to these improvements, take the opinion of any person in the king's council?—I solemnly declare I did not.

I shall be glad to ask you a question, which seems a weighty one: you said, that you thought yourself responsible for the alterations in the draught of the charter, though the alterations should not be found in your handwriting. Now I ask whether you do not think you were exonerated from that responsibility, from the moment you laid the draught of that charter before the Attorney and Solicitor General, and had their approbation of it?—I certainly shall be very glad to share any criminality with the then Attorney and Solicitor General.

In what year were you appointed auditor of Greenwich Hospital?—In March, 1771.

Whom did you succeed?—The present lord chancellor.

What do you look upon to be your duty as auditor of Greenwich Hospital?—To audit the accounts, after a manner prescribed by the constitution of Greenwich Hospital; there is a book recites that.

Do you not, at your first appointment, look upon yourself as counsel for Greenwich Hos-

pital?—As that office always used to be filled by a barrister, it was a mark of attention in appointing me, I then being a barrister; when I discontinued being a barrister, I gave up every paper respecting the Hospital.

Were not you a director at first?—I was, two or three months.

How?—I was a director by warrant.

Are you now?—Yes.

How?—*Ex officio*. Before I was personally auditor, and personally director; at present, I am auditor and *ex officio* director: if I cease to be auditor, I cease to be director; before I had warrants by name from the Admiralty.

Who laid the new charter before the Attorney and Solicitor General, or by whose directions was it laid before them?—I fancy it was by the direction of the board. If the minutes of the board are called for, I fancy it will be found, that the draught of the charter being produced, it was ordered to be laid before the Attorney and Solicitor General.

Whether there was any particular opinion, stated in writing, to the Attorney and Solicitor General, or the copy of the commission laid before the Attorney and Solicitor General to be compared. Was any opinion asked?—The charter recites that commission; I apprehend the commission was laid before them; but if not, I take it for granted, the Attorney and Solicitor General must have examined it at the time, because it is recited in the draught of the charter.

Then no particular opinion was desired of any particular fact?—No; I apprehend all that was done, was giving this paper to their clerks, which is a draught of the charter, and which they have signed at the bottom, after making any alterations that they had thought necessary.

How long was the charter laid before the Attorney and Solicitor-General, before it was returned to you?—It was never to be returned to me; I was not the solicitor for the charter, it was laid before me in the same manner as it was laid before them. When I quitted the bar, I gave back my brief, and they having other occupations, I believe did not give it back till March 1773; I know that, as a director of the Hospital; I believe it was returned by them in the spring following; then several difficulties and delays arose; I believe, about the quantum of security to be given by persons having the Hospital's money; that carried it on, I believe, until the end of the year 1775, before the whole business was arranged and settled.

You say you are answerable for all that is left out. In the appointment, 'in and for Greenwich Hospital to be seafaring men,' why was the word 'for' left out?—I did not know that it was left out, I don't know now that it is left out.

'All the officers of the House, or otherwise, to be seafaring men,' why are the words 'or otherwise' left out?—I should rather venture to risk the saying, it was not inserted in any

draught that was laid before me; I will venture to say, I should not have put it into any draught, and will venture to say, I should not have struck it out. I forgot to mention there was an act of parliament passed, in regard to the landed estate, a year after this charter, which takes notice of the charter.

I understood you, that the motives of the new charter was to vest the landed estates, and give a power to buy and sell landed estates.—No, by no means, the great motives of the new charter were, to enable the Hospital to act in all those capacities that it was necessary a corporation should act in; because, it was before necessary to make every member of the Hospital a party in civil suits. Another great motive was, to give the Hospital a security for their money. Another was the case of the boys.

The other alterations of the charter were made by the solicitor, which you did not attend to?—I cannot quite say so, because my own hand is before the House and may prove against me, but I rather believe it is so.

Was the charter confirmed by act of parliament?—Not strictly, but there is an act to vest the estates, which were prior to the charter, and by charter were strictly vested by two acts of George the 2nd. There is an act, a year after this charter, which vests them out of the king into the commissioners, pursuant to charter, and which recites this charter at that time.

It appears, by the Records, that this matter of charter had been in agitation several times formerly?—I believe from the beginning of the century. I believe there are draughts of charters as old as 1720, but all that time the Hospital was in a fluctuating, unsettled body, and rather pressed for supports, and not in the magnitude that I found it.

You take that to be the reason, when draughts were made, that the Hospital's revenues were not sufficient?—I believe, when the Hospital grew to this magnitude, that the necessity of getting a charter was felt; and it was a work of some time, and great trouble, to get it through the several offices.

What part of the establishment of Greenwich Hospital do you mean, that has not been settled till within this two or three years?—I believe additional captains and lieutenants, and men, and many officers to attend those men. All the business of the management of the Derwentwater estate is a very modern story, and was never settled, in the manner it is now, till 1749. [Mr. Eden withdrew.]

Mr. Sibthorpe, (late Solicitor to the Hospital) called in.

Please to give an account to the Committee of what you know relative to the new charter of Greenwich Hospital?—About the beginning of the year 1772 or 73, I am not quite positive as to the time this circumstance happened in the Hospital, I was at that time, with Mr. Everest, joint solicitor of the Hospital; lieute-

nant-governor Boys, when I was attending at the board, I believe it was March 1772, lieutenant-governor Boys was in the chair, at the head of the board, the solicitor was ordered to be called in, and I went in.

What board?—The board of directors of Greenwich Hospital, at the Hospital. The lieutenant governor said to me, Mr. Ellis, Sir, is gone away with the Hospital's money. I said I had heard so. Then Sir, said he, you must contrive to get it. I said I thought that was impossible, as the Hospital was then circumstanced: I asked Mr. Boys how it was to be done. Sir, said he, it must be done. I answered, that might be very well in his idea, but it was not possible, in my opinion; for that there seemed to be no mode of getting at this money, but by filing a bill or information, in the name of the attorney general, at the relation of the governor of the Hospital, against Mr. Ellis for an account, and that before that business could be got to perfection, Mr. Ellis would be gone. There did not appear to me to be any shorter way, as no person whatever could possibly swear that Mr. Ellis was indebted to him, or to a rope of sand, for so I called the Hospital at that time, it not being incorporated. I was then directed, as solicitor, with Mr. Everest, to take the opinion of Mr. Eden, and I believe too of the attorney-general, as to the proper mode of proceeding against Ellis. Some of the directors seemed to be struck with what I said, and thought it might be necessary to have further powers vested in them, and that there should be a charter, and that gave rise to this charter in a very short time after, perhaps even at the same board; but, in a very short time after, the board of directors came to a resolution that a charter should be applied for in the common course of business. When the minutes were brought to the solicitor, the business was set about; Mr. Everest drew the first draught and brought it to me, he having, I believe, under my directions, applied for and got the charter for incorporating the Foundling Hospital, and took that, in some degree, as a mode for the words; of course, after he had made his first draught, he brought that draught to me, in which I made several alterations, and after I had made those alterations, that draught was copied and laid before Mr. Eden: Mr. Eden, I think, I am pretty sure too, made some small alterations in the draught so laid before him, and also drew out a paper in which he prescribed other alterations, and, in pursuance of which direction from Mr. Eden, I did, in that draught, make more alterations than I had in the former draught, my lords. The matters being in that state, Mr. Eden returned the draught, and said, that he thought it was a proper draught; and then, I take it, that the draught itself was copied and laid before the then attorney-general, another copy was made for the solicitor general, and a third copy for Mr. Eden, with intent that they should meet together in consultation, and settle the charter

as it ought to be. After the business was got into that stage, there was a meeting between the then attorney and solicitor general, and Mr. Eden, at which I was present. I think, and am pretty certain too, though I have not had any connection with the Hospital for about three years past, therefore if I err it may be easily allowed me, that there were some alterations made in the copy, which Mr. Wedderburn had as his copy; there was a direction also at the bottom of one of these copies, signed by the then attorney general, and Mr. Wedderburn, directing the security clause to be added to it; that clause was also drawn, and they approved it. In the course of this business the charter, or draught of the charter at least, was laid before the board of directors, I think more than once; it was, towards the close of the business, laid before the general court, and it was at that time, and I believe the only time, that I was ever called into the general court to be asked a question respecting that charter. I had expressed my doubts what the stile of the Hospital should be; I thought the word commissioner was not a proper one, because it was a charter, and not a commission: I thought the word governor not a very proper one, there being another governor, or a particular officer called a governor: I thought the word guardian; which I believe is part of the title of Foundling Hospital, an improper thing. Having signified these doubts, I was called into a general court of admiralty, at the head of which board lord Sandwich was, and having been asked, I am not sure by whom, I think Mr. Stephens, what I had to say respecting the title? I made nearly the same observations then that I have now. Lord Sandwich said, it did not seem to signify one farthing what they were called, so that they were incorporated by some title, upon which I withdrew. These are the general outlines of what I have had to do, in respect of this charter. It was my duty, after the business had been gone through at the Admiralty, being older and having had more experience than Mr. Everest, to conduct the matter, more especially as I lived in town and he at Greenwich, and I prosecuted the charter till it got under the great seal; and, I think, the first Saturday, or perhaps the second in December, 1775, I carried the charter to the Hospital, and thought that I had done the most noble act that I should ever do, if I lived an hundred years.

Whether you recollect which were the alterations that were made by yourself, before it was sent to the attorney and solicitor-general, and Mr. Eden, and which were made by those gentlemen afterwards?—I cannot say as to the purport of them now, if I had the papers, I believe I could point them out.

Are they the papers which are before the House?—I believe they are.

(Some papers shewn the witness.)

This is the draught as first prepared by Mr. Everest, and brought by him to me; the alterations made are in my hand-writing, and are numerous.

I don't mean to give you the trouble of mentioning every verbal alteration you have made, but to particular points; the first is, the omitting the power to the general court, and giving it to the Admiralty; the second, the power of removal in the Admiralty; the third, the appropriation of these monies for the use of the Hospital; the fourth is, the power of selling?—As to one of these questions, the words of this first draught, as it originally stood, were those. "And that the said governor, and deputy-governor, and the treasurer now and for the time being, do assist at all meetings, the said commissioners and governors, or the directors, of the said Hospital hereafter mentioned; and we do hereby empower our said commissioners, or any seven or more of them, to recommend to our commissioner for executing the office of high admiral now and for the time being, our high admiral, for the time being, or as they may be, to appoint, from time to time, all officers necessary to be employed in and for the said Hospital." These words were in this draught, when Mr. Everest first drew it and brought it to me.

Is the word 'accordingly' there?—No, I altered it in this way. "And we do hereby empower the members of this corporation, or any seven or more of them, so assembled in a general court, to recommend to our high admiral, for the time being, or our commissioners for executing the office of high admiral, now and for the time being, to appoint, from time to time, all officers necessary to be employed in and for the said Hospital." And it appears by this draught, that upon reconsidering that clause, I struck it wholly out.

Will you be pleased to recollect, whether it was of your own motion, or from instructions from any body else, that you did strike that clause out?—It was either from my own motion, or conjunction with Mr. Everest, in considering the matter again, and not from any person whatever, except himself and me, that that alteration was made so.

What might be your reason for striking of that out?—I cannot possibly say what my reason was, but I am well convinced in my mind, that at the time I did it, I had good reason for so doing; for I had no wish whatever to do any thing but prepare such a charter as should be for the benefit of the Hospital, in all its parts, as far as my judgment should extend.

Do you recollect any abuse that had been made, by that power in the general court, that made you think it necessary to strike it out?—I have endeavoured a great deal to recollect since what I heard passed from Mr. Eden, that there was any such power practised by the general court, but during the time I had the management of the business of

otherwise than those I have stated to your lordships.

When you carried the charter, to lay it before the Attorney and Solicitor General, did you then apprise those two great lawyers that you had altered several of the points from the original commission?—I did not, to the best of my recollection, take it to the Attorney and Solicitor General; a Mr. Sibthorpe, who was at that time concerned jointly with me, had a great deal of the transaction of that business with the Attorney and Solicitor General.

Do you undertake to say that you did not carry it to the Attorney and Solicitor General?—I do not recollect that perfectly.

As your memory is so extremely short, I imagine it is some days since you have been summoned to attend this House, have you ever had the curiosity, knowing that your memory is so extremely defective, as it appears here, to compare the charter with the original commission?—I have looked at them.

How long ago?—I was looking at them this morning.

How long is it ago since you were summoned to attend this House?—I believe about ten, or positively [qu. possibly] eleven days.

Did you not think it material, when you had had so great a hand, and absolutely the drawing of this charter, not to refresh so short a memory as yours is, with the particular investigation of that charter, and comparing it with the commission before this morning?—No; I have looked at it, but not as comparing it, nor under any idea of giving evidence of it here.

Did you ever take notice to any body, that you had made these alterations in this charter?—Not that I recollect.

At no time did you ever mention it to any body?—Not that I know of.

How long is it since you have been summoned to attend this House?—I think, about ten or eleven days.

Have you had any conversation during that time, respecting the business of Greenwich Hospital?—I have conversed at several times with various officers of the Hospital.

With whom upon this business?—I believe most of the officers; I don't know any one particularly that I have conversed with about it.

Have you conversed upon the subject of the charter?—Not that I know of.

How long have you been the solicitor to Greenwich Hospital?—I was concerned with Mr. Sibthorpe immediately after my father's death, which was ten years ago.

How were you bred? To what business?—An attorney.

How long have you been an attorney?—I was an attorney very soon after my father's death.

We don't know when your father died?—I believe, I explained to your lordships, it was about ten years.

How long have you been appointed solicitor

to the Hospital?—Almost immediately upon my father's death, which is about ten years ago.

Were you an apprentice to any attorney before you was an attorney?—I was clerk to my father.

How long?—Not quite five years, but I served the remainder with Mr. Sibthorpe.

I only wish to ask the witness; he says that this new charter was laid before the Attorney and Solicitor General, I desire to know whether they made any alterations in it, after it was laid before them?—I believe, that the almost, if not entirely, the only alteration made by the Attorney and Solicitor General, was the clause directing security to be taken.

Was the old commission laid before the Attorney and Solicitor General at the same time, with the draught of the new charter?—I don't know.

Who were the Attorney and Solicitor General at that time?—The present Chancellor was Attorney General, and Mr. Wedderburne, Solicitor.

So you don't know whether the Attorney or Solicitor General did know there was any variation made between the new charter and the old commission?—I don't know that any otherwise, than was necessary to constitute a charter; there must be some variation, to be sure.

[The witness was ordered to attend on Monday next, and bring those materials with him, which he made use of in drawing up the charter.]

Whether you singly drew up the charter, or whether Mr. Sibthorpe was concerned with you in drawing it up?—Mr. Sibthorpe and I, to the best of my recollection, drew it together.

He was concerned with you in drawing of it?—Yes, he was.

I think you say, Sibthorpe and you together drew it?—Yes, I think so.

Under the direction of Mr. Eden?—Yes.

You recollect that was the case, do you?—Yes, perfectly.

I suppose, after you had drawn this charter, you delivered it to Mr. Eden for his perusal?—It was laid before Mr. Eden for his perusal.

When you laid it before him, did not you observe to him, that you had made these essential alterations?—I cannot recollect, whether I or Mr. Sibthorpe laid it before him.

Did Mr. Eden make any alterations?—I cannot recollect.

Mr. Ibbetson called in again.

Mr. Ibb. In the hurry of looking over the minutes at the bar, I did omit one which I should have taken notice of; I did mention to the House, that there had been an application from the general court to parliament, for an act of parliament to incorporate the Hospital, that did not take place; and, I find, upon looking over the minutes, since I withdrew

from the bar, that the draught of the charter had been settled by the Attorney and Solicitor General, with the addition of the security clause, was laid before the general court, and that was on the 10th of March, 1774. The directors in their Memorial to that general court say, thus: that having laid before the Attorney and Solicitor General, a draught of a charter of incorporation for the Hospital, &c. and having added, according to their recommendation, a clause for the treasurer to give security, the resolution of the general court was, that they approved of the draught of the new charter.

Who were present at that time?—Lord Sandwich, Mr. Buller, lord Palmerston, lords of the Admiralty, &c. &c. in the whole fifteen in number.

Was the charter read paragraph by paragraph at the general court?—The draught of the charter appears to have been read through; I recollect very well, that the charter itself was not read.

You say it appears, that the draught was read through, it may be entered as read, it may appear so upon the books; but were you present at the general court?—I don't recollect that it was not read; and I am very well convinced, in my own mind, that the draught was read, but that the charter itself was not read, any more than sometimes as your lordships' bills are read, just the title of it.

Please to recollect, and will you take upon you to say that it was read?—I think I can venture to say it, but I will not say it positively, but I have no reason to think that it was not read.

Do you take upon you to say positively that it was or was not?—I believe it was read, I know nothing to the contrary.

Whether it was not one of the points of business, upon which they met to consider of this draught?—It was a part of the business of the day, it came in among other business.

Was this draught of the charter, to the best of your knowledge, read to the general court?—To the best of my knowledge and belief, certainly it was read.

Were any of these alterations between the commission and charter, pointed out to the general court at that time?—No, there was nothing pointed out in it, that I recollect.

Was the commission produced at that court, and read?—No, it was not, nor any comparison made between them.

Did no member there take notice of any alteration between one and the other?—Not that I recollect; and I cannot see how they could, unless they had had them both before them?

How soon did you observe, or were you acquainted with the alterations in the charter?—I never knew any thing of the alterations myself in the charter; I never compared it with the commission; I concluded it was properly settled, having gone through such heads; till Mr. Baillie pointed them out in

his book, no other alteration than the security clause, that was an addition as it stands upon the books, as recommended to be inserted.

[Mr. Ibbetson withdrew, and the House adjourned to Monday.]

Mr. Everest, the Solicitor, called in.

Have you brought those papers that were ordered?—I have. [Produces some Papers.]

What are these papers?—The several draughts and copies of charters, that I have been able to collect since last Friday.

That you have been able to collect?—Yes.

When were those draughts and papers made out?—The first was drawn by myself; was corrected, as I find afterwards, by Mr. Sibthorpe, who was then joint solicitor of the Hospital with me; a copy was made from that, and laid before Mr. Eden, and corrected by him after that; three copies were made, one for the Attorney General, one for the Solicitor General, and another for Mr. Eden.

Are those all the papers that you have produced?—I was going on, if the Committee will give me leave: the Attorney and Solicitor General advised, by an opinion in writing at the end of one of them, that a clause should be added for the treasurer to give security; this was laid before the board of directors, and they ordered the clause to be drawn; accordingly a copy was then made for the board, with the clause inserted; I find, by the minutes of the board, that it was then laid before the board, and they made alterations in it; from thence another copy was made for the general court, and by them finally approved.

Are these all the papers?—I have not them all.

Are those that you have been describing all the papers you have brought with you?—I will read their titles.

Are they, or are they not, all you have brought with you?—I have not brought all I have been describing, because I could not find them all; what I have brought is the first draught which I drew myself, and which was corrected by Mr. Sibthorpe; that was afterwards corrected by Mr. Eden, and then the third draught was corrected by the Attorney and Solicitor General, and Mr. Eden.

Have you any papers but what you have produced?—None, but what I have produced.

Have you searched into the record-room, and made any enquiry concerning these old papers and draughts you spoke of the other day?—I have been into the record-room and searched there; I found that the papers were not there, but in my possession, and I have now delivered them to your lordships.

Were there any other alterations ever made in the draught of the charter, but those you have mentioned?—No.

Did you ever converse with any body else, but those that you have named, upon the drawing of the charter, to [qu. with] my lord Sandwich, or any of the lords of the Admiralty?—No.

Nor receive any message upon the subject from any body?—None.

Was Mr. Ibbetson concerned in drawing up that charter?—Not by any means.

What was the expence of the charter?—I have not taken that out.

Do you know how much you have received upon that account?—Upon account of the charter?

Upon account of the expence of passing it?—I am not prepared at present to answer that question, but I believe it was upwards of a thousand pounds: if the House have any wish to go into that, I will, upon another day, produce all the papers I can respecting that.

When did you propose to return those papers that belonged to the record-room?—I had not fixed any time in my own mind about it; I really thought they were returned; it has been a long time since I have seen any thing of them.

Have you compared any of those old papers since you were here on Friday with the present charter, to see whether the alterations in this new charter are contained in these old papers?—Some of them are in the old draught of a charter in George the 2nd's time, which I have delivered to your lordships.

Is that part contained in that old paper, which gives authority to the lords of the Admiralty to sell the Hospital land?—I don't know.

That charter never passed, did it?—No.

[Mr. Everest withdrew.]

The Auditor, Mr. Eden,* called in.

Please to give the Committee an account of what you know relative to the passing the new charter of Greenwich Hospital?—In the beginning of the year 1772, Mr. Ellis, the steward of the Hospital, failed for a considerable sum of money, I believe about 3,500*l.*; I was at that time at the bar, and acted as counsel for the Hospital; it was my duty to settle the form of recovering this money; I found, on looking into the matter, that it was very difficult to direct a mode of prosecution; and I also found, that if any such mode could be carried on, there were no means of recovering, in case Mr. Ellis's circumstances should be found insolvent; for there had been no security given by him, or indeed any other person, entrusted with the money of the Hospital: it was my duty to represent this to the board of directors; and I pointed out to them, that they were directed under the commission, under which we acted, to have a charter. I knew that under that charter it would be easy to guard against any such inconvenience in future. The board upon this directed that the matter should be considered, I believe, by myself, and the then Attorney and Solicitor General. It was our first wish of all, I believe, to have had this charter passed in parliament. It was moved in parliament,

but the answer was, you had better go to the usual form for it through the crown officers; we don't wish it agitated here. The business of the charter then went on, and several meetings were had about it; I believe about this time, till in the month of March, 1772, that I then gave instructions to the solicitors of the Hospital, Mr. Sibthorpe and Mr. Everest; Mr. Sibthorpe, very eminent in his profession there, and a man we had full confidence in; Mr. Everest was then a very young man; I directed them to prepare a draught for us to look at. They prepared a draught upon the ground of the Foundling Hospital's charter and the commission, taking out as much of the commission as they thought applied for the benefit of the Hospital; when it came to be put into the charter, I did not know who prepared it, but I now understand Mr. Everest did; Mr. Sibthorpe corrected it, and brought it so corrected to me. This don't carry me, I believe, later down than the month of March; I made some corrections, which I understand are now before the House, and which may be seen; in making those corrections, I should not have thought it necessary to have retained a single syllable of the commission, if I could have suggested better words; I believe, however, it so happened, that in general the expressions of the old commission are retained, as far as they were proper to be retained. There were several other things occurred in settling that charter, which seemed material to be attended to for the benefit of the Hospital. Hitherto we had a considerable establishment for the benefit of the boys who were sons of seamen. That establishment had not been regularly put under the establishment of the Hospital; it arose from, and was supported by, some contingent sums. The boys go off in three years tolerably completed in their education. This was grown so considerable an establishment, that it seemed material to subject that to a general court, and the general form that goes through the rest of the regular business that is inserted in the charter, not in the former commission; so all the security clauses of those that have the Hospital money pass through their hands, were submitted for the opinion of the Attorney and Solicitor General, and they gave their opinion that it was necessary to insert such a clause: that is a considerable benefit to the Hospital, as at all times there is at least 50,000*l.* or 60,000*l.* in circulation, for which the Hospital before had no security, and for which it has now a full security. There were some provisions put into the charter about the power of altering and disposing of the Hospital's lands, which I hear has drawn some attention. As far as I can recollect of the matter, I apprehend that no such power of aliening or disposing of any thing is given by these words: I conceive them to be mere words of form, so far as relates to any possibility of impairing the property of the Hospital: I conceive that every purchaser takes,

* Now [A. D. 1814.] Lord Auckland.

subject to that trust, and at his own peril; so far as those words give a power of purchasing, I don't know, I rather apprehend they do not; for in cases subsequent, I understand it has been found necessary to have special licences from the crown to make those purchases; and in regard to exchanges, it happened two years ago, when there was an exchange, and then it was found necessary to pass an act for that purpose, which act actually passed.

I have not looked into the thing, because the House did not give me notice that I was to be summoned here; I heard it by accident; I have not had much time to look into it; but, I believe, that upon looking into the acts, which vest the Derwentwater estates in the Hospital, it will be found, that no charter of the king's alone can turn and affect that, exclusive of the nature of the trust, by which any purchaser might be subject to the trust; I do not at this moment recollect any other variations in the charter. There is an omission, which has been taken notice of: the general courts recommending the persons proper to be admitted; the words that were in the old commission were, I believe, pretty nearly these, that the commissioners, meaning the general court, shall recommend to the board of Admiralty, to appoint officers necessary for the Hospital. Now I can only suppose what I did then think; by what I think now upon it, it can only have one of two meanings, either that I must have thought at that time, that the commissioners were meant to recommend the persons, so that they must be appointed; in which case I should have had no hesitation of striking it out, because I am clearly of opinion, it is a much better trust to be in the hands of the board of Admiralty, who must know the merits of seamen who have served, than in the hands of persons very respectable in life, but not seamen. I understand this is an old clause, from the first institution of the Hospital; and I conceive that the words meant, that the commissioners should recommend all officers necessary to be appointed; so many captains, so many lieutenants, and so on; but that the board of Admiralty are to name the particular captains and lieutenants. There is a clause too, giving the Admiralty power to displace. Now, as far as that addition goes, I believe, it restrains the power of the Admiralty: the Admiralty used to appoint, and do now, indeed, till further order; what I must have thought was this, that this is rather a hard tenure upon an old officer in the Hospital, that he should hold it during the will of the board of Admiralty, whatever his behaviour was; therefore, I inserted, I think, they should have power to displace for misbehaviour. There were some other words, that the revenue of the Hospital should be applied to the purposes of the charity, and no other purposes whatever; I don't recollect (it will appear) whether I scratched out the words; if I did, I am not ashamed of it, because they are words that mean nothing;

and, at this instant, if applied to any purposes, except the purposes of the charity, they are punishable. I don't know whether I have answered the noble lord's question, but I don't recollect any thing more at present.

Whether the committee is to understand from what you have said, that these several alterations in the charter were made by yourself?—Upon my word that is a very hard question to answer; I have not seen the paper, except casting my eyes upon them in the bundle; I have not seen them to examine them, therefore I cannot tell; at the distance of seven years, it is impossible for me to know. If any body will take the trouble to examine them, my hand-writing is very easy to be seen, whether I altered them or no; I apprehend I am responsible for every word that is in this charter.

I don't mean whether you are answerable for it or not; but I want to know the fact, whether you made the alterations or not; if you wish to satisfy yourself, by looking into the draught that is laid before the House, that may easily be handed up to you, to refresh your memory?—If you will please to let me see the draught, I will tell your lordships.

(The draught is handed to Mr. Eden.)

Mr. Eden. I certainly did not alter every thing, because I see in the Attorney General's brief, there are some passages that are altered.

Please to look at the alterations, one by one, and acquaint the committee of what you have altered?—In my brief, there does not happen to be one alteration, which I am surprised at; but, I believe, the reason was, I had quitted the bar before it was brought to me.

Then, from thence, are we to understand, that none of the alterations were made by you?—I am afraid to say that, because the solicitor's having free access to me, many things that may appear to be altered, might be by their asking, and my suggesting alterations: I should mention, that there appears to be a great delay in this business; it was stated in the beginning of the year 1772, and was not completed till the end of the year 1775; in the course of that time it was revised very repeatedly by different persons; and was, I believe, a long time before the Attorney and Solicitor General; they had too much business to give it out of their hands, but at last it did come, though I have sent for their report upon it; it was brought to me from the secretary of state's office, and I have it here, if the House wish to see it.

(It is handed up to the table.)

There were some other persons consulted in this charter, I believe; who were these persons? I understood you to say, it was laid before the Attorney and Solicitor General, and some other persons?—I am misunderstood, I am afraid; I don't recollect any other persons, except Mr. Sibthorpe, the solicitor of the Hospital; I did not mean to say so.

Whom did Mr. Tindall succeed?—Mr. Pocock, who had been at sea.

Whom did Mr. Pocock succeed?—Mr. Berry, who succeeded Mr. Stubbs.

Had Mr. Stubbs been at sea?—Never, I believe; his son is here, who can speak to that.

Mr. Stubbs was the first chaplain that was ever appointed?—Yes, the first that appears by the Hospital books.

Who is the next upon the list?—The auditors.

Who is the present auditor?—Mr. Eden.

Was he ever at sea?—Not that I ever heard.

Whom did Mr. Eden succeed?—Mr. Thurlow.

Was he ever at sea?—Not that I ever heard.

Whom did he succeed?—Mr. Hussey.

Had he ever been at sea?—Not that I ever heard.

Whom did he succeed?—Mr. Jarvis.

Was he ever at sea?—Never a one of them as I ever heard.

What is the business of the auditor?—After the accounts pass through the clerk of the cheque's inspection, they are delivered to the board of directors, from whence they are delivered over to the auditor, and by him audited; and all such accounts as are ready are declared twice a year before the chancellor of the exchequer.

Are you acquainted with the nature of auditing them?—Yes, I have seen many of them audited.

Is there any thing in passing of these accounts, that could not be done by a purser?—There is no great difficulty in it.

Do you think that there is any thing in that, that an ingenious clever man, who has been a purser to a man of war, might not be able to do?—No, I think not.

Who is next upon the list?—The governor's clerk.

What is his name?—The present governor's clerk is not the person set down here; he has not lodged in the Hospital; at present, the only person here is William Pagett, who was secretary to sir George Rodney, in the West-Indies.

Has the present governor's clerk been at sea?—I believe not.

What is his name?—Pansford.

He is clerk of the council?—That is by virtue of his being the governor's secretary.

You think he has not been at sea?—No, I have heard he has been an officer of horse.

What has been his particular duty?—I apprehend the particular duty of the secretary to the governor, is to carry all correspondence that he may have with the Admiralty, and to attend at the councils of the Hospital, and that has been for many years seldom or ever acted by the principal, it always has been by deputation.

Then Mr. Pansford has not attended at the council?—I believe not,

Did you ever see him there?—Never.

And how many years have you been in the Hospital attending the council?—I don't attend the council.

How many years have you been in the Hospital?—From my childhood.

Did you ever see him in the Hospital?—Yes, at sir Charles Hardy's house, and have dined with him there, but have not seen him upon duty.

What is your rule in regard to checking people that are absent?—The men are mustered every day, and checked all those out of their provisions that are not present.

By whom is the governor's clerk appointed?—By the governor.

Does there appear to you to be any thing in the duty of clerk of the council, that could not be done by a person having been at sea?—The duty is very easy; it is nothing more than the little dirty complaints of the men getting drunk, and all that is his principal business.

Who is the next?—The secretary's clerk.

Who is he?—The present one is Mr. Francis Cook.

Is he a landman, or has he been at sea? or is he in the Hospital?—A landman, and in the Hospital.

Whom did he succeed?—Mr. Richard Horne.

What was he? and was he lodged in the Hospital?—Mr. Horne had never been at sea, so far as I could learn, nor lodged in the Hospital.

Had you any other before him that had been at sea?—Not that I could ever learn.

Who are the next?—The dispensers, there have been only two of them, the present one has never been at sea.

What is his name?—John Pocock.

What is his employment?—He is the dispenser of medicines, the immediate instrument under the physician, who prepares and compounds all the medicines.

Is there any thing in his business, that might not be done by a surgeon in the navy?—I apprehend not.

Who is the next person?—The brewers, Stephen Coleman Hickman is the present.

Was he ever at sea?—No, nor any of his predecessors.

What is Mr. Hickman?—So far as I know of him, he was an officer in the army; he had a fortune of his own; he quitted the army, and married a young lady at Greenwich; he went into the brewing business; he continued that six or seven years, and failed twice.

And then he was appointed brewer to Greenwich Hospital?—After some time.

As far as you know of that business, do you think that a man that had been at sea, and had not failed, might not have been as good a brewer as Mr. Hickman?—I cannot be a judge of that.

Do you know any thing to the contrary?—No.

Is he a good brewer?—We have never had

one complaint as I know of, since he has been brewer to the Hospital.

How long has he been brewer to the Hospital?—He was appointed in August, 1777.

How long is it ago that he failed?—A year or two before that, I believe.

Please to go on to the next?—The next are the matrons; the present ones are Sarah Smith, Mary Birt, and Eleanor Power.

Are either of them the wives or widows of seamen?—Sarah Smith is the widow of a late captain in the Hospital; the other two are said to be unmarried.

Are they daughters of persons that have been at sea?—One of them, I heard, was sister to a lieutenant; that lord Hawke made some time ago; he was drowned, and left his family in great distress. Lord Hawke put her in as a matron.

Had she any employment in lord Hawke's family, before she was sent to Greenwich Hospital?—Not that I know of.

Had any of those matrons any employment in my lord Sandwich's family?—Lord Sandwich was not at the board of Admiralty when any of those matrons were appointed.

Who was at the head of the Admiralty when they were appointed?—Mrs. Power was put in, I have heard, by lord Egmont; the other two by lord Hawke.

Do you find any before them that have been widows or wives of sailors?—Mary Chamberlain, who was before Mrs. Power, was a captain's widow; Ellis Gregory was a captain's widow; Elizabeth Smith was a lieutenant's widow; the three first, I cannot learn what they were.

As far as you have been able to learn any thing about them, they have always, till now, been widows of seamen?—Yes, widows of seamen.

I would ask, whether you think the being waiting women; we will say to either lord Anson's or lord Hawke's lady, or the lady of any others, that have been at the head of the Admiralty, entitles them to be put into the Hospital as matrons or nurses, or in any capacity in the Hospital?—Certainly not.

Go on to the next?—They are the butlers; the present one is William Saward, who has been at sea.

When was he appointed?—On the 25th of February, 1772.

Had he been at sea before his appointment, or afterwards?—Before his appointment, he was clerk of one of the yachts, and had been many voyages, I believe.

The next?—The next is John Izard; he had not been at sea, as I could learn.

Who was at the head of the Admiralty when the last butler was appointed?—Lord Sandwich. The next are the butler's mates; the present ones are, James Skeene and Philip Lewis.

Have they been at sea?—Skeene has never been at sea; Lewis, I have learned, within

this day or two, was going with sir Charles Wager, as his steward, but never went out of the Channel; I received that information since the list was delivered in.

Do you know any thing relative to their predecessors?—No, there are four of them; I have marked them, such as I have been able to collect, that the butler's mates have all been at sea; the two before that, John Watts and John Cheese, I can learn nothing concerning them.

Who was at the head of the Admiralty when the two stewards and the two last chaplains were appointed?—Lord Sandwich.

Who appoints the butler's mates?—They are appointed by warrant from the Admiralty.

E. of Sandwich. Don't you mistake? the butler's mates are not appointed by warrant from the Admiralty.—A. Yes, they are.

Who are the next?—The cooks.

Who is your present cook?—There are three, Alexander Moore, James Wartell, and Samuel Troke, now Wartell is dead.

What is Troke?—He was at sea with my lord Anson; Moore has not been at sea that I can learn.

Who were their predecessors?—Henry White had been at sea; Thomas Cale, Thomas Bird, and William Wilson; the three prior to them, I cannot learn that they had ever been at sea.

But from your not being able to learn, you don't conclude whether they have or not?—I have made the best enquiry that I could amongst the old persons in the Hospital.

But those that you have not been able to learn any thing of, you don't from thence conclude they have been at sea or not?—No; the next are the cook's mates.

Who are they?—The last that stands upon the list is Roger Hunt, who has not been at sea; John Mathews has been at sea; James Arundell has not been at sea; Moses Joice has not been at sea.

Who were their predecessors?—There are seven or eight; some of them have been at sea, and some have not been at sea. The next are the scullerymen; the present one is Nicholas Levitt; he has not been at sea.

Who were his predecessors?—Randolph Norris, Edward Griffith, John Bardin, Thomas Cole, William Steel, and Francis Steward; none of them, as I can learn, have ever been at sea.

What is their employment?—The scouring the pewter pots and dishes of the pensioners.

There is nothing in that, but what a man that has been to sea might do; is there?—No, the next are the scullerymen's mates; they are assistants to the others; the present ones are William Gardner, Robert Russell; neither of them have been at sea; preceding them, there were three others that had not been at sea; then Arthur Knight and Jacob Stranger have been at sea; those before them are William Silkworth and William Stalbert, who have not been at sea.

Who are the next?—The porters of the Hospital; the present one is James Lane; he has never been at sea; John Willey is his predecessor; there are five of them never been at sea.

What is the business of the porter?—He has a lodge at one of the gates of the Hospital.

Is his business such that cannot be done by a seaman?—Certainly not; the barbers are the next.

Have any of them been at sea?—The present one is James Mackeness, he had been at sea; he was, as I understood, valet de chambre to my lord Anson.

Have any of the rest of the barbers been at sea?—None of them.

Is this Mackeness a barber?—Yes.

Is that a place of any profit?—A very considerable one.

To the best of your knowledge, does he attend?—Never.

It is a sinecure; is it?—Yes.

The barber employs others; he acts by deputy, does he not?—Yes.

How many deputies does he employ?—Only one principal man; but he has a hundred other shavers under him.

What profit may he have for doing nothing at all?—I don't know; I should suppose that he has about 120*l.* or 130*l.* a year clear.

Was not his employment of more value formerly?—I have understood some years ago, from some complaints of the pensioners not being duly shaved, that his deputy was paid something more in addition to his duty.

How much salary has he from the Hospital?—Twelve pounds a year.

What does his profit arise from?—He has so much: a halfpenny a week for all the men, and a penny for the boys.

Who are the next?—The messengers.

Who are they?—The present one is William Herbert, he was at sea with lord Hawke. The next are treasurers clerks, the present one is Edward Boxley, he has been at sea. The next is the clerk of the works.

Who is he?—The present one is Robert Mylne.

Has he been at sea?—Not that I know of.

What is his particular business?—To carry on all such works and repairs as he may be directed to do, from the board of directors of the Hospital.

Who was his predecessor?—William Robinson.

What is he?—An architect.

Was he ever at sea?—No.

Is this clerk of the works a permanent officer, or only a temporary one?—Formerly, the clerk of the works was only paid 5*s.* a day, while new works were carrying on; but now there are works always going on, his place is looked upon to be permanent.

What is the next article?—The dispenser's assistant: the present one is William Wheatley, he has never been at sea.

Is there but one assistant?—Only one.

Have his predecessors ever been at sea?—Never a one of them, to the amount of nine. The next article is surgeon's assistants, the present are Thomas Carnarvon, and David Stacy Story; neither of them have been at sea. William Wallace, and Francis Thomas, their predecessors, both had been at sea. The next article is the turncock of the Hospital, Robert Dickey, he has never been at sea; there are but two before him; they had neither been at sea.

What is the next article?—The whole list is gone through.

Is there not a schoolmaster?—Yes; there is.

Is Mr. Furber the schoolmaster?—Yes.

Was he ever at sea?—Not to my knowledge; there are some gentlemen that say he has been at sea.

Do you know any body that can speak to that point better than you?—Mr. Taylor, the surgeon of the Hospital, says he has been at sea.

The steward's clerk, Mr. Daniel Ball?—He is lodged in the house.

Has he been at sea?—He does not stile himself in that light, he has been at sea a few months, but does not call himself a seafaring man.

What do you mean by seafaring man?—I understand a man that has been borne on board a ship's books, and has actually been at sea.

So you think this one has actually been at sea?—He has.

He has made a voyage?—I cannot say that; I have heard him say he has been at sea, and borne on a ship's books.

Do you apprehend that this person has been a voyage, and comes under the description of being any ways qualified to partake of this charity?—He is in the House, and can best answer for himself.

To the best of your knowledge, do you know of any new offices that have been lately introduced into the Hospital, that were not known before; that there was no foundation for in any old charter, or even in the new charter, that there is any provision for?—I don't at present recollect any.

If I was to ask you a question, would you be able then to answer? Do you recollect a music-master in the Hospital, to instruct the boys in singing?—I know that the present organist had an addition to his salary, for eaching the boys to sing; I don't know of any new office.

What was the addition?—Twenty pounds a year.

Was that addition made by the Admiralty, or general court?—It was recommended by the general court.

Was there any direction given to that general court, to the best of your knowledge, to name that person?—I don't know of any.

And you never heard?—No.

[Mr. Maule withdrew.]

Mr. Stubbs called in.

Was your father the first chaplain of Greenwich Hospital?—Yes.

Had he ever been at sea?—No; he was always borne upon a ship in ordinary; he was minister of Woolwich Hospital when he was first made.

You say he was borne upon a ship in ordinary, so are the present chaplains; you understood that he was chaplain to the ordinary at Woolwich?—Yes.

Not borne upon a ship in ordinary?—Yes; his servant used to be mustered.

Are not the present chaplains borne on board a ship in ordinary?—I cannot tell that.

[Mr. Stubbs withdrew.]

Mr. Maule called in again.

Do you understand how the present chaplains are borne as belonging to the ordinary?—By virtue of being chaplains of Greenwich Hospital; one is entered upon the Hulk's book, at Woolwich, the other at Deptford; the two present chaplains are so, and it was so before.

Mr. Stubbs called in again.

Was your father borne upon the ordinary before he was chaplain?—Yes; he was made chaplain of Greenwich Hospital, for being borne upon the books.

Do they ever contribute to the charity, by being borne in ordinary to the Hospital?—That is a thing I cannot answer, it is so long ago.

You are sure he never was at sea?—I can say he never was at sea to go a voyage.

Were those chaplains, by being borne in ordinary, looked upon as belonging so to the Hospital, as to contribute any quota, which chaplains have done who have been at sea, to the charity of the Hospital?—I don't believe that, I cannot account for that, I don't know.

Your father was chaplain to the Hospital?—Yes.

How long ago?—In the year 1704 or 1705.

Upon the first establishment of the Hospital?—The very first of all.

And was he looked upon as a sea chaplain when he was put into the Hospital?—I cannot account for that; the two first chaplains were taken from the ordinary.

Taken from the ordinary as sea chaplains?—Yes; one from Woolwich, and the other from Deptford.

Wednesday, March 17, 1779.

Mr. Ibbetson, (the Secretary) called in again.

I think you were desired to make some search into what had been the practice of the Hospital, relative to the recommendation coming from the general court to the Admiralty. Have you made any such researches?—I have.

What is the result of them?—I have looked over the books from the commencement of the establishment of Greenwich Hospital to the present hour, with as much care as I have been able to do, in the short space of time; for I had turned them over page by page, that I might not miss any thing. The first thing I find that has any relation to this business, is a memorial which appears in the books in November, 1704; there is neither the day of the month nor signature, but it is clearly in November; the memorial is from the commissioners to prince George of Denmark, then lord high admiral, setting forth, that they had made preparations for 100 men; that was the first hundred that was taken into the Hospital; that they had considered of the officers and servants necessary to be employed, and at the same time presenting his highness a list of candidates for the respective offices, that his royal highness might appoint such as to him might seem meet: these are the words of the recommendation. "In March 1707-8, Edward Smith stands upon the minutes of the general court, as appointed cook's second mate, upon the recommendation of the directors and the commissioners;" and on the 1st of April I find entered into the books the prince of Denmark's warrant in form, appointing the same man. On the 5th of January, 1716, I find that the general court recommended six persons (naming them) to the board of Admiralty, for their approbation of either of them that they should think proper, if they should appear to their lordships to be duly qualified; they were recommended for the office of secretary, in the room of Mr. Vendrick, deceased. On the 9th of December 1716-17, the general court recommended to the Admiralty Mr. Thomas Browne, to be appointed master brewer. On the 23d of the same month, they recommended a lieutenant, Edward Smith, to the lords of the Admiralty, to be appointed a clerk of the cheque, and in June 1722, they recommended Mr. ———, to be the master brewer. I don't find any thing after that date.

None since the year 1722?—None. I find many recommendations from the Admiralty to the general courts, to desire that they will recommend a person, such as the organist.

How many books have you brought?—I have brought those books. They are what I have made these extracts from, and I brought the books that I might refer to them.

Put marks in them, and let them be handed up to the table?—There are marks in them: there are papers which refer to the particular dates.

(The books and the papers were laid on the table.)

You mention an instance of six recommended. One of those was appointed; was he not?—It was so.

Was any one appointed, who was not included in the recommendation?—It will ap-

pear by the books, that the list of these people has been omitted to be entered at the bottom of the memorial to the prince: they have not entered the names of the several people then recommended.

Does it not appear in any account of the Hospital, whether those persons were actually in the office afterwards?—It is impossible to know that, unless we knew the persons recommended, and there is no list of them.

[Mr. Ibbetson withdrew.]

Mr. *Maule* (Clerk of the Cheque) called in again.

Whether from the list of different officers that have been appointed by warrant from the Admiralty, you have made any computation of the number that have been appointed since the present lord has been at the head of the Admiralty?—I am preparing the list, I have not quite finished it, I shall soon have done it. His grace the duke of Richmond ordered me to make such a list, a little before the House met; I immediately began to prepare it.

With regard to those officers that are landmen, does it come within your knowledge that any of them have given any thing for their employment?—Not to my knowledge.

Do you particularly know whether the chaplains have made any allowance to the preceding chaplains for coming into office?—I don't know farther than report; I cannot take it upon me to say it is so.

Were not you in an office that received the pay, and did you always transmit that pay? What office were you in when these gentlemen were first appointed chaplains?—I was treasurer's clerk.

As such, did you pay the chaplains?—Yes.

Did you pay it to them or their predecessors?—I cannot take upon me to say that at present.

Recollect.—I have often paid the salaries of different officers to their relations or friends, upon their signing the books of the Hospital; I don't recollect the case of the chaplains at present; I have frequently paid the officers' salaries to different people.

Please to endeavour to recollect, whether you ever since the present chaplains have been appointed, have paid any of their pay to the late chaplains?—I believe I may.

The late chaplains were Mr. Tindal and Mr. Campbell?—Yes.

Who came in upon Mr. Tindal's resignation?—Mr. Cooke.

Do you recollect whether you have or not paid any of Mr. Cooke's pay to Mr. Tindal, since he has been a chaplain?—I cannot take upon me to speak to that at present.

Have you paid any of the other chaplain's pay to Mr. Campbell?—No.

I understood you to say before, that you thought you had paid some of their pay to their predecessors?—Some of Mr. Cooke's, I believe, I have paid; but I cannot say posi-

tively, without referring to the books of the Hospital.

Do you think that by referring to your books you could speak more positively?—Yes; I believe I could.

What was Mr. Tindal's age when Mr. Cooke succeeded him?—I believe 81 or 82.

Did not Mr. Tindal use to discharge the duty by deputy?—For some years.

And did not Mr. Campbell do the same?—They jointly procured a person to do the duty for them.

Did they lately perform the duty in person? Have they since lord Sandwich has been at the board?—No; very seldom.

Was Mr. Tindal's curate lodged in the Hospital?—The curate of the Hospital had a room or two, and has been lodged for a great number of years.

I think you said the other day, that Mr. Campbell, the chaplain of the Hospital, had ran away from a ship, and had his R taken off afterwards; did you say that?—I believe I did.

From whence did you gather that information?—From the navy office. I believe it may be proved from the books of the navy office, and the Admiralty books; there is an order on the books of the Admiralty, by which he received that five or six months pay.

Do you know the particulars of that running away?—No; there are people that can give an account of that, I believe.

Do you speak from hearsay?—I speak of what I saw upon paper, that Mr. Campbell had belonged six or seven, or five or six months to a ship, and had ran away; he had interest at the Admiralty, and had got that R taken off, and there is an order from the Admiralty for his receiving his pay, and he did receive it.

Can you tell what year that was in?—No.

Can you guess at all at it?—No; I cannot.

Did you see it yourself?—No.

Whether of late years, before the appointment of the two present chaplains, the man appointed by Mr. Tindal and Mr. Campbell as their curate, for some time did not do the general duty of the Hospital?—He did.

Whether in Mr. Campbell and Mr. Tindal's time, they ever did any duty at the infirmary?—Never.

Is there any duty done there now?—There is constantly.

You said that the present chaplains were entered upon the books of some ship, and that their pay went to the Hospital; I did not quite understand that, be so good as to explain it?—By virtue of their appointment to Greenwich Hospital, one is borne upon the ordinary, which is the hulk at Deptford, and the other at Woolwich, and they receive the groats for their servants and for themselves; the Hospital receives that, in aid from the treasury of the navy.

When they are borne upon these hulks, are they as chaplains to these ships?—Yes; they are.

When a clergyman is appointed chaplain to

Greenwich Hospital, is it in consequence of his appointment that he becomes chaplain also to a hulk?—It has ever been so since I can recollect.

Is it under one appointment, or are they separate?—They are separate appointments, but one is in consequence of the other.

Now for what hulks are these gentlemen appointed chaplains?—I don't recollect the names of the ships now.

In these two ships, are there any men?—There are men in the hulks; the men that are lent from Greenwich Hospital; and all those men that are lent from other ships that come from Deptford, they are all victualled in, and borne on board of the ordinary, and therefore all the chaplains pay for that ship, and the whole ordinary goes in aid to Greenwich Hospital.

Do the chaplains do any duty in consequence of that?—No; none.

Are they liable to be called upon for any duty?—I never heard that they were.

Then the additional appointments which are given to a chaplain, for himself and for his servant, are converted to Greenwich Hospital, for the use of the Hospital?—Yes.

But they are paid and discharged for chaplains of such a hulk?—Yes, the treasurer for the navy pays the pay due to them, as chaplains of the hulk to Greenwich Hospital. I have paid it myself many times.

Are not the ordinary the men that are employed to do business, a-float, rigging, and several things of that sort?—All a-float.

Are they not paid as belonging to a hulk, not to a ship?—They are paid as belonging to a hulk, not to a ship.

To a hulk, which is an old ship, cut down with a pair of shears, and mast put in it?—Yes.

Then have they not four-pence a month out of every man's pay who is concerned in that yard?—Yes.

Were you ever concerned in any other dock-yard?—No.

This four-pence a month is only a mode, if I understand you right, of giving that pay to Greenwich Hospital, in aid of the revenue of the Hospital; if I understood you right, it is a sinecure at Woolwich and Deptford, because the men go to church in the parish churches, they being both in towns; but at Portsmouth, Chatham, and Plymouth, the chaplain does the duty of the ordinary, and reads prayers to the ordinary?—Yes; there are church-ships there.

These gentlemen do no duty, they are not sea-chaplains by being appointed chaplain to the ordinary?—No; certainly not.

Is it usual or not for these chaplains, who have served a regular time at sea, to pay any thing out of the pay so earned towards the charity of Greenwich Hospital; I don't mean people who have been borne on board of ship, for an infant may be that?—The stoppages are all made by the proper officers; it is not

in the option of the chaplain whether he will contribute or no, all stoppages whatever are made at the pay-office: there is a stoppage made out of their pay always, regularly every month, for Greenwich Hospital, whether they like it or not.

Do you look upon persons to have a right to hold a chaplainship in Greenwich Hospital, who can claim it no other ways than having having been borne on board of a ship, or an hulk? You have seen the charter?—I have.

Then you will answer the question I have put?—I cannot give any answer to that.

Are you acquainted with the dock-yards of Portsmouth, Plymouth, or Chatham, to know the manner the chaplains do the duty and are paid there?—No, I am not master of the subject; I have been frequently there; I have been on board a church-ship at prayers; but how their proceedings are there, I cannot take upon me to say.

Do you apprehend that the chaplains of those dock-yards are paid for the ordinary business, being paid by the dock-yard for the duty on board the church-ships?—They are not paid for the ordinary, I take it. They are separate chaplains, I think.

You are not sure of that?—I think it is so; but I will not be positive.

Then we will come to Deptford or Woolwich. Do you know, or have you ever heard, that there were two chaplains, one for the ordinary at Deptford, another for the ordinary at Woolwich? Did you ever hear that?—No, I never heard it.

Upon the present establishment of the chaplains for Deptford and Woolwich; for I apprehend that one of the chaplains is borne on board the hulk at Deptford or Woolwich. Is it so?—It is so.

What becomes of that pay?—I have said before, it goes to the Hospital, in aid to the revenue: I have many years received it myself, when I was the treasurer's deputy.

Then since the Hospital has been established, there has been no duty done on board the ordinary of Deptford and Woolwich? What does it amount to? Is it considerable?—Not very considerable.

From what stoppage does it come?—The treasurer of the navy makes the stoppages, and he pays it under the several heads of chaplains wages, and groats for the ordinaries.

Are the chaplains for the ordinaries borne on board the hulks, supposed to be chaplains of all the ships lying at that port?—No, it has nothing to do with the ships at that port, only the men that are borne on board the hulks.

Is not the chaplain of a dock-yard, chaplain of the whole ordinary, let it be Deptford, Woolwich, or Chatham?—I believe not, for this reason; for if chaplains to the dock-yards were chaplains to the whole ordinary, Greenwich Hospital could not receive it at the same time.

• There is a chaplain besides to Woolwich

draught that was laid before me; I will venture to say, I should not have put it into any draught, and will venture to say, I should not have struck it out. I forgot to mention there was an act of parliament passed, in regard to the landed estate, a year after this charter, which takes notice of the charter.

I understood you, that the motives of the new charter was to vest the landed estates, and give a power to buy and sell landed estates.—No, by no means, the great motives of the new charter were, to enable the Hospital to act in all those capacities that it was necessary a corporation should act in; because, it was before necessary to make every member of the Hospital a party in civil suits. Another great motive was, to give the Hospital a security for their money. Another was the case of the boys.

The other alterations of the charter were made by the solicitor, which you did not attend to?—I cannot quite say so, because my own hand is before the House and may prove against me, but I rather believe it is so.

Was the charter confirmed by act of parliament?—Not strictly, but there is an act to vest the estates, which were prior to the charter, and by charter were strictly vested by two acts of George the 2nd. There is an act, a year after this charter, which vests them out of the king into the commissioners, pursuant to charter, and which recites this charter at that time.

It appears, by the Records, that this matter of charter had been in agitation several times formerly?—I believe from the beginning of the century. I believe there are draughts of charters as old as 1720, but all that time the Hospital was in a fluctuating, unsettled body, and rather pressed for supports, and not in the magnitude that I found it.

You take that to be the reason, when draughts were made, that the Hospital's revenues were not sufficient?—I believe, when the Hospital grew to this magnitude, that the necessity of getting a charter was felt; and it was a work of some time, and great trouble, to get it through the several offices.

What part of the establishment of Greenwich Hospital do you mean, that has not been settled till within this two or three years?—I believe additional captains and lieutenants, and men, and many officers to attend those men. All the business of the management of the Derwentwater estate is a very modern story, and was never settled, in the manner it is now, till 1749. [Mr. Eden withdrew.]

Mr. Sibthorpe, (late Solicitor to the Hospital) called in.

Please to give an account to the Committee of what you know relative to the new charter of Greenwich Hospital?—About the beginning of the year 1772 or 73, I am not quite positive as to the time this circumstance happened in the Hospital, I was at that time, with Mr. Everest, joint solicitor of the Hospital; lieute-

nant-governor Boys, when I was attending at the board, I believe it was March 1772, lieutenant-governor Boys was in the chair, at the head of the board, the solicitor was ordered to be called in, and I went in.

What board?—The board of directors of Greenwich Hospital, at the Hospital. The lieutenant governor said to me, Mr. Ellis, Sir, is gone away with the Hospital's money. I said I had heard so. Then Sir, said he, you must contrive to get it. I said I thought that was impossible, as the Hospital was then circumstanced: I asked Mr. Boys how it was to be done. Sir, said he, it must be done. I answered, that might be very well in his idea, but it was not possible, in my opinion; for that there seemed to be no mode of getting at this money, but by filing a bill or information, in the name of the attorney general, at the relation of the governor of the Hospital, against Mr. Ellis for an account, and that before that business could be got to perfection, Mr. Ellis would be gone. There did not appear to me to be any shorter way, as no person whatever could possibly swear that Mr. Ellis was indebted to him, or to a rope of sand, for so I called the Hospital at that time, it not being incorporated. I was then directed, as solicitor, with Mr. Everest, to take the opinion of Mr. Eden, and I believe too of the attorney-general, as to the proper mode of proceeding against Ellis. Some of the directors seemed to be struck with what I said, and thought it might be necessary to have further powers vested in them, and that there should be a charter, and that gave rise to this charter in a very short time after, perhaps even at the same board; but, in a very short time after, the board of directors came to a resolution that a charter should be applied for in the common course of business. When the minutes were brought to the solicitor, the business was set about; Mr. Everest drew the first draught and brought it to me, he having, I believe, under my directions, applied for and got the charter for incorporating the Foundling Hospital, and took that, in some degree, as a mode for the words; of course, after he had made his first draught, he brought that draught to me, in which I made several alterations, and after I had made those alterations, that draught was copied and laid before Mr. Eden: Mr. Eden, I think, I am pretty sure too, made some small alterations in the draught so laid before him, and also drew out a paper in which he prescribed other alterations, and, in pursuance of which direction from Mr. Eden, I did, in that draught, make more alterations than I had in the former draught, my lords. The matters being in that state, Mr. Eden returned the draught, and said, that he thought it was a proper draught; and then, I take it, that the draught itself was copied and laid before the then attorney-general, another copy was made for the solicitor general, and a third copy for Mr. Eden, with intent that they should meet together in consultation, and settle the charter

as it ought to be. After the business was got into that stage, there was a meeting between the then attorney and solicitor general, and Mr. Eden, at which I was present. I think, and am pretty certain too, though I have not had any connection with the Hospital for about three years past, therefore if I err it may be easily allowed me, that there were some alterations made in the copy, which Mr. Wedderburn had as his copy; there was a direction also at the bottom of one of these copies, signed by the then attorney general, and Mr. Wedderburn, directing the security clause to be added to it; that clause was also drawn, and they approved it. In the course of this business the charter, or draught of the charter at least, was laid before the board of directors, I think more than once; it was, towards the close of the business, laid before the general court, and it was at that time, and I believe the only time, that I was ever called into the general court to be asked a question respecting that charter. I had expressed my doubts what the stile of the Hospital should be; I thought the word commissioner was not a proper one, because it was a charter, and not a commission: I thought the word governor not a very proper one, there being another governor, or a particular officer called a governor: I thought the word guardian; which I believe is part of the title of Foundling Hospital, an improper thing. Having signified these doubts, I was called into a general court of admiralty, at the head of which board lord Sandwich was, and having been asked, I am not sure by whom, I think Mr. Stephens, what I had to say respecting the title? I made nearly the same observations then that I have now. Lord Sandwich said, it did not seem to signify one farthing what they were called, so that they were incorporated by some title, upon which I withdrew. These are the general outlines of what I have had to do, in respect of this charter. It was my duty, after the business had been gone through at the Admiralty, being older and having had more experience than Mr. Everest, to conduct the matter, more especially as I lived in town and he at Greenwich, and I prosecuted the charter till it got under the great seal; and, I think, the first Saturday, or perhaps the second in December, 1775, I carried the charter to the Hospital, and thought that I had done the most noble act that I should ever do, if I lived an hundred years.

Whether you recollect which were the alterations that were made by yourself, before it was sent to the attorney and solicitor-general, and Mr. Eden, and which were made by those gentlemen afterwards?—I cannot say as to the purport of them now, if I had the papers, I believe I could point them out.

Are they the papers which are before the House?—I believe they are.

(Some papers shewn the witness.)

This is the draught as first prepared by Mr. Everest, and brought by him to me; the alterations made are in my hand-writing, and are numerous.

I don't mean to give you the trouble of mentioning every verbal alteration you have made, but to particular points; the first is, the omitting the power to the general court, and giving it to the Admiralty; the second, the power of removal in the Admiralty; the third, the appropriation of these monies for the use of the Hospital; the fourth is, the power of selling?—As to one of these questions, the words of this first draught, as it originally stood, were those. "And that the said governor, and deputy-governor, and the treasurer now and for the time being, do assist at all meetings, the said commissioners and governors, or the directors, of the said Hospital hereafter mentioned; and we do hereby empower our said commissioners, or any seven or more of them, to recommend to our commissioner for executing the office of high admiral now and for the time being, our high admiral, for the time being, or as they may be, to appoint, from time to time, all officers necessary to be employed in and for the said Hospital." These words were in this draught, when Mr. Everest first drew it and brought it to me.

Is the word 'accordingly' there?—No, I altered it in this way. "And we do hereby empower the members of this corporation, or any seven or more of them, so assembled in a general court, to recommend to our high admiral, for the time being, or our commissioners for executing the office of high admiral, now and for the time being, to appoint, from time to time, all officers necessary to be employed in and for the said Hospital." And it appears by this draught, that upon reconsidering that clause, I struck it wholly out.

Will you be pleased to recollect, whether it was of your own motion, or from instructions from any body else, that you did strike that clause out?—It was either from my own motion, or conjunction with Mr. Everest, in considering the matter again, and not from any person whatever, except himself and me, that that alteration was made so.

What might be your reason for striking of that out?—I cannot possibly say what my reason was, but I am well convinced in my mind, that at the time I did it, I had good reason for so doing; for I had no wish whatever to do any thing but prepare such a charter as should be for the benefit of the Hospital, in all its parts, as far as my judgment should extend.

Do you recollect any abuse that had been made, by that power in the general court, that made you think it necessary to strike it out?—I have endeavoured a great deal to recollect since what I heard passed from Mr. Eden, that there was any such power practised by the general court, but during the time I had the management of the business of

the Hospital, general courts were very unfrequent; four, five, even to nine months have elapsed, from one general court to another.

Had you any information from any body, that the general court had not made use of that power?—Not that I know of.

Upon what ground do you say they had not made use of it?—I don't say they had not, but that I did not know they had. I had nothing to do with the appointment of officers.

Had you any reason to think that they had not made use of that power?—I rather think I had no particular reason, more than that the general courts were held so seldom, there seemed no necessity to continue that power; that it might be injurious to the Hospital, if the officers should be delayed nine or ten months.

Was there not a power for the Admiralty to call general courts when they thought proper?—I do not recollect that, I have not seen the commission these three years.

The other alterations were the additional power given of a displacing or removal?—That was an alteration in pursuance of Mr. Eden's direction, this draught having been copied from my alterations by my son; this is that copy. Mr. Eden, when he looked through it, has made marks in the margin; and upon loose paper, gave his thoughts respecting what alterations should be made in such and such places; he has also made several other trivial alterations in the draught, as he goes on; in this draught, folio seven, there is something which I am well convinced in my mind is Mr. Eden's; and these words are underlined, after the words "except the governors and treasurer of the said Hospital, provided that all such persons to be admitted into the said Hospital, as the officers of the House, or otherwise, be seafaring men, or such who have lost their limbs," down to the words, "or otherwise," are underlined; and in consequence this alteration was made, "except the governor and treasurer thereof, and to displace, remove or suspend any such officer or officers for his or their misbehaviour, and to appoint any such officer or officers in the room of him and them so displaced or removed, provided that all such officers to be employed in the said office are seafaring men." These words are my writing, in pursuance of Mr. Eden's directions.

Do you know what were the reasons in Mr. Eden's directions, for leaving out the words "or otherwise"?—That will appear I believe upon that paper of Mr. Eden's writing.

(The Paper read.)

In the power given to vacate the offices, and to alter the salaries, that is all upon a representation of the general court upon Mr. Eden's plan, how came it to be different from that in the charter?—I have no doubt, but these words as they stand in this draught so inserted, were shewn to Mr. Eden after they

were so inserted, and that he approved them; the words are these: "And we do hereby authorise and empower our high admiral for the time being, and commissioners, &c. to appoint all officers necessary to be employed in and for the said Hospital, except the governor and treasurer thereof, and to displace, &c."

With regard to the other two alterations, the leaving out these words in the charter, that say, all monies shall be applied strictly to the use of the said Hospital.—I believe they were left out, as being thought wholly unnecessary, for the inserting them would have no kind of effect, more than the law would have on those who took the money.

And the power of selling, who put that in?—I look upon it, so much as I know of charters, that the charter would be incomplete, unless such a power were inserted, though perhaps it would not be effectual to enable the corporation to sell.

What I want, is to know who was the person that inserted that, and was it in the original draught, as sent to you by Mr. Everest?—They were in the first draught.

So that they are inserted by Mr. Everest originally?—Yes.

Has there always been a joint solicitor, or was it peculiar to that time?—I have heard that Mr. Radley, and Mr. Everest's father, were joint, but I don't know it of my own knowledge; I did not know Mr. Radley.

The powers, as I understand you, for framing this new charter, were not given you at a general court, but by lieutenant governor Boys, at a court of directors.—No, by the minute of the board, not by the directions of any one man; I think the minute of the board of directors, but I am not sure whether it was that, or the minute of a general court; I rather think the minute of a board of directors.

Where was it held?—The general court always at the Admiralty, the board of directors is held generally, but not universally, at Greenwich, or Salters-hall.

Then you can certainly recollect, whether your power came from the general court, or board of directors?—I cannot say that.

Had you powers in writing?—We had, for we never did any thing without power in writing.

Signed by whom?—The secretary.

Who is that?—Mr. Ibbetson.

Where is that?—I delivered it, with all the papers I had respecting Greenwich Hospital, when I quitted London about three years ago.

Can you recollect what the powers were?—To prepare a charter, under the direction of Mr. Eden, as I think, and am pretty sure too.

Without particularizing the alterations that were to be made in it?—Without describing any alterations at all.

Do you apprehend, that a board of directors, without consulting a general court, have a power to order new charters to be made out, of their own accord?—I think that they might have that power, but am not sure which it

was, the general court's minute, or the directors' minute; I am not sure, but the minute will speak for itself.

And where are these minutes?—The original in the hands of the secretary, Mr. Ibbetson; the copy came to me.

You have mentioned what lord Sandwich said to you at the board, that it did not signify under what name, provided they were incorporated. I will ask you whether you had any other conversation with lord Sandwich, relative to the charter, and whether he ever gave you any directions relative to it, except that time?—I had never any conversation with him I think upon any subject, and never any directions from him of any sort whatever, except what I mentioned.

Whether in the number of years, that you belonged to Greenwich Hospital, previous to the charter being granted, you ever knew of one instance of the general court recommending any officer?—No.

How many years have you been acquainted with the office?—I was first concerned as agent for Mr. Everest's father, about the year 1756.

You must explain that if you please; you said, that you never knew that the general court had recommended officers to the board of Admiralty, to be appointed for Greenwich Hospital. Have you said that?—I have said so.

Had such a thing happened, must you have been acquainted with it?—It does not follow that I should.

Did you attend the general court?—Yes.

Where?—At the Admiralty, they were never held any where else, as I know of.

Why were the general courts reduced to twice a year instead of four times; for by the commission, they are to be held four times a year, and oftener if the Admiralty board called them; why was that alteration made?—I cannot take upon me to say that.

Can you take upon you to say, who made that alteration?—I cannot without having recourse to the papers.

Whether you carried the draught of this new charter to the consultation alluded to, of the attorney and solicitor-general?—The copies were either carried by me or Mr. Everest, or one or other of my clerks, but to say which at this time, I cannot; I did attend the consultation.

At that consultation, did you point out to the attorney and solicitor-general, the alterations made in the draught of the new charter, from what was in the old commission?—The attorney-general was in possession of a commission; he had been auditor, and as such, doubtless had a commission, and I think I remember to have seen it in his custody bound in red leather; the solicitor-general, I have no doubt, had a commission, Mr. Eden, as an auditor, could not have executed his office properly without one; I therefore conclude he had one, but to say that I pointed out the dif-

ference between the commission and the charter, I cannot.

Do you remember that it was a subject of the consultation, whether those alterations were proper to be adopted in the new charter or not?—I don't know that; Mr. Wedderburn did make some alterations at the consultations in the form, and the then attorney and solicitor-general did subscribe one copy, and I think the writing itself is of Mr. Wedderburn's writing.

Then you know, from these circumstances, that they were fully aware that these alterations were made in the new charter?—I cannot take upon me to say, that the attorney and solicitor-general, or either of them, did compare the charter with the commission. Some short time before the charter passed the seal, the then attorney-general requested to see the old commission; he desired to see those commissions which had been granted by former princes, and they were carried to his house in Ormond-street; after the charter was completed, I fetched them from thence.

It was not a matter that you heard discussed at the consultation?—The principal matter that was discussed at the consultation, was respecting the security that should be given by those that had the receipt, or expenditure, of the Hospital money.

When I speak of the alterations, I allude to the four particular points that have been stated to you?—I don't think they were particularly attended to at that time.

How long was this consultation before the charter passed the seal?—The paper will shew you, because there is the signature of the then attorney and solicitor-general, with the date to it, as I think.

You don't recollect?—No, but dare say the paper will tell you, because, I dare say, there was a date to it. [Mr. Sibthorpe withdrew.]

Mr. Ibbetson called in.

How long have you been concerned in Greenwich Hospital?—Seventeen years, next May, I have been appointed secretary to Greenwich Hospital.

What has been the practice of the general court, with respect to recommendations to offices?—I am very certain that there has not been, in one instance, not only since I have been secretary of Greenwich Hospital, but since I have been in the Admiralty, which is 24 years, the general court having recommended to the Admiralty, any one officer to be appointed into Greenwich Hospital.

Do you recollect, from any documents that you have in your possession, whether there ever were any recommendations, from the first institution of the Hospital?—I believe there was; I believe it will appear, upon examining the books of Greenwich Hospital, that, for some few years after its first establishment, I think that I have seen that the general court did recommend to the Admiralty; but I be-

time past, slaughtered bulls, which were cut up for the use of the pensioners, brought down to Greenwich Hospital, and served up at their tables. I represented this to sir Charles Hardy, the governor, desiring he would lay the depositions before the board of directors, that the contractor might be prosecuted; they were laid before the board of directors, and he was prosecuted; but the prosecution was carried on in such a desultory manner, that it was a whole year before it was brought to an issue. I set off at first with six witnesses, most of them the butcher's own servants, at last they dwindled away to only two, the prosecution was so tedious; and long before it came to issue, one man I was obliged to secrete in the country, where he was not known, or else, I believe, I should have lost that man also, and have had no evidence at all.

Did these six witnesses make affidavits?—No, only three; I thought it would not be so proper to take them all to be sworn before I came into a court of justice; so I took three only to be examined before the magistrate, the prosecution was carried on, the butcher was convicted, but I should have told your lordships, whilst he was under prosecution, the directors thought proper to renew the contract with the same man, though there lay before them information upon oath, that he had cheated the Hospital; I objected to that contract, but it was to no purpose.

What court of directors was that? call for the minutes of that court, to see who were present?—I don't know the number of the directors, but it will appear by the minutes, it was in June 1775; I believe the depositions were laid before the board of directors; the contract was renewed in the March following; in the mean time I will inform your lordships, that while he was under this prosecution, a second contract was renewed with the same man, after he was convicted of fraud.

(Mr. Ibbetson produced the book of the Minutes of the Directors)

“A minute of the board of directors of the 14th of June 1775; present, sir Charles Hardy, captain Baillie, captain Hood, Mr. Fonnereau, Mr. Pett, Mr. Steward, Mr. Cust, Mr. ———, Mr. Hicks, sir Peter Dennis, Mr. Barker, Mr. Marsh, Mr. James, the rev. Mr. Cooke, captain Campbell, and Mr. Palgrave. The governor laid before the board a paper, which had been brought to him by the lieutenant-governor, containing the affidavit of James Hattersley and John Boycot, two persons late in the service of the butcher, and Alexander Moore, cook, first mate, setting forth, that the Hospital has, for some time past, been served with the flesh of bulls and bull-stags, instead of that of oxen, agreeable to the contract. Ordered, that the solicitor lay the said affidavits and the butcher's contract before Mr. Newnham, and take his opinion in what manner it is proper to proceed against the contractor.”

Capt. Baillie. In March following the contract was renewed again.

Mr. Ibbetson. There is something which followed this, the solicitor, on the 14th of June, the very day the affidavits were brought, it was desired to take an opinion in what manner the butcher could be prosecuted. At the very next meeting, which was the 24th of that month, the solicitor delivered to the board Mr. Newnham's opinion upon the case, laid before him in consequence of the resolution of the last board, &c. Whereby he recommends, that both the present and former contractor should be prosecuted on their respective bonds, for not having complied with their contracts; ordered, that the solicitor do cause prosecutions to be immediately commenced against them, agreeable to the said opinion.

Are there any other orders of the board relative to this business, between the order and the renewing of the contract?—No. On the 13th of March, 1776, present sir Charles Hardy, captain Baillie, captain Hood, Mr. Fonnereau, Mr. Pett, Mr. Steward, Mr. Cleveland, Mr. Hicks, Mr. Barker, Mr. Wells, Mr. James, the reverend Mr. Cooke, captain Campbell, Mr. Wells, and sir Richard Bickerton, proposals were given in for supplying the Hospital with meat; and Mr. Mellish the present collector, offering to do it at 1*l*. 12*s*. per hundred weight, his proposal was found considerably the lowest, and was accepted. Ordered that the solicitor prepare a contract between the Hospital and Mr. Mellish accordingly.

Are those contracts determined by ballot or a division? In what manner is it settled?—The method of contracting with Greenwich Hospital is, advertisements are always published, and people that are inclined to serve the Hospital, give their tenders in writing, those tenders are sent in sealed to the board, and the general practice has been, that before they are opened, the people are called in; they write their names on the outside, and are asked, whether those are the lowest proposals; if they say yes, they are desired to withdraw, and then it is opened; that has been the constant practice; I don't say, whether it has always been the practice, for it has been thought a useless thing latterly to call them in, after once they have sent in their proposals sealed, then the lowest proposer is the man who has it; I never remember any division about it.

You were present at this court, were you?—I was present at the one in 1776.

Do you recollect that any objection was made to renewing the contract with the person who was then under a prosecution by that very board?—I don't recollect in 1776, if any was made in 1777, I cannot say, because I was not present then.

Whether after the contract was made once to Mr. Mellish, was there any proof given of Mr. Mellish's having served the Hospital with any meat that was improper, or was there any fault found with his performance of the

remaining part of the contract, after this gentleman was turned out?—At the first contract, after the affidavits, I mean the contract in 1776, the matter had not been brought to trial, consequently he had not been convicted, and must be looked upon, I apprehend, till such conviction, as an innocent man.

Was, or was not this person who was complained of, continued after there had proof been given of his serving the Hospital with bad meat; I think it has come out that he was discontinued?—No, it does not appear that he was discontinued.

Was not the contract given to Mr. Mellish?—Yes, he was the person that was prosecuted.

Was there any other person that that contract was offered to, I understood you so?—No.

If there had been any objection made to renewing the contract with this person, by their method of keeping the minutes, that objection would appear?—It certainly would, if it had been an objection made to the board; if any one of the members present, had desired that his dissent might have been entered in the minutes, it certainly would, but it is not usual to take down in minutes, any thing a single member says.

Would it have appeared, if it had been determined by a majority?—Certainly it would.

Was captain Baillie present at that first meeting?—He was.

It does not appear that captain Baillie did object?—It does not appear by the minutes.

You were present, did he in fact object?—I don't recollect that he did.

Can you refer to the advertisement, and the form of it?—I cannot produce the form of the advertisement, we do not keep any copy of them, they are things of course.

From your recollection of them, are those advertisements of such a nature as to oblige the court to give it to the lowest bidder?—No, there is nothing obligatory to the advertisement; it is for such persons as may be inclined to give in their proposals at Salter's hall at such a day, and such a time, and they are to do it agreeable to a form, which they will receive at the proper office at Greenwich Hospital, where, by the advertisement, they are directed for the form.

Is there any thing said in the advertisement, that the lowest bidder's terms will be accepted?—Not at all.

But it has been the constant practice among the directors to take the lowest?—Yes, ever since I have been there.

Q. to Captain Baillie. Did you object at that board of directors?—*A.* I did positively object to Mr. Mellish's having a renewal of his contract; the answer was, it was a mere matter of suspicion, and that those servants of the butcher who had given evidence, were under prosecution themselves, for stealing the contractor's meat; therefore their evidence ought not to be taken at all, upon that I said no more, the contract was renewed. The

prosecution commenced in June, 1775, it was not brought to issue till June, 1776; after that it appeared, that Mr. Mellish had, prior to this contract, supplied the Hospital with bull-beef for a considerable time.

How does it appear?—Upon the affidavits of the different persons carried before the magistrate, they had sworn to different contracts; one man to the contract then existing, another to the contract prior to that, and I moved it to the board, that he might be prosecuted for that contract also. Mr. Eden was a principal person that assisted to bring on that prosecution, which continued another whole year.

What was the event of the first prosecution?—He was prosecuted only for ten penalties, but I believe a hundred might have been proved in the course of that contract; he was convicted upon ten penalties.

Were you at the trial?—I was.

You heard the sentence pronounced?—I heard it pronounced by the judge and jury, that he was convicted for ten penalties, they brought the action for 100*l.* only.

You say you objected when the contract was renewed, whilst he was under a prosecution?—Yes.

You say somebody objected to your objection, do you recollect who that was?—I remember very well, if it is proper to mention names, which I would rather wish to decline; Mr. Marsh, formerly a commissioner of the victualling, did declare, that he had heard the butcher's men were under prosecution, for stealing the contractor's meat, and that defence was set up for him in the King's-bench, which appeared to be entirely groundless, and without a shadow of foundation; on the second prosecution I was ready in court with five witnesses; he was prosecuted for fifty penalties, for fifty breaches of contract.

In what year was that?—1777.

This man was convicted in ten penalties, for ten breaches of contract; I suppose there was in the contract a penalty of 10*l.* for each breach of the contract?—Yes.

Was there or not a general penalty besides, for the breach of the contract?—I understood that the penalty of 10*l.* was merely to oblige him to bring his meat in due time, that the people might have their dinners at the proper hour, and a general bond for the performance of his covenant in 300*l.*

Was the next contract renewed with Mr. Mellish before the second trial or not?—Having been convicted in the ten penalties, after that the contract was renewed with him, then a second prosecution was carried on.

Was the second contract renewed with him, before the compounding the second trial?—Yes, after he was convicted on the first trial, he compounded the penalties on the next.

When was that?—He was prosecuted first in 1775; he was convicted in 1776; and in 1776, there was a fresh prosecution carried on against him, for fifty other breaches of his contract.

You don't understand me; when the contract was renewed a second time, was it previous to his compounding the penalties, for the second prosecution, or after?—The last contract was after he had compounded the penalties.

Give an account of compounding the penalties.—He had several times petitioned the board of directors, acknowledging himself in the wrong, and would have submitted entirely to their humanity, or goodness towards him; the prosecution was ordered to be carried on, and it was brought into court, and I had five witnesses ready to convict him, when it was all on a sudden compounded for 100*l.* though he was charged with fifty breaches; and, after that composition of the penalties, the contract was renewed again, and he still serves Greenwich Hospital.

Whether there were not two of the same name concerned?—Father and son.

Distinguish when the contracts were made, who were prosecuted, the father or the son?—I believe the father and the son were the same; for my part, I could never distinguish the principal; the son took upon him the contract the last time, in his own name, I believe.

In whose name was it?—They were both named Peter.

Were they both joined in it?—In fact, I believe they were; after they had compounded the penalties, the contract was put up again, and Mr. Mellish proposed; I objected then, and hoped, and entreated the board that they would not deal any more with a person who had been convicted of fraud, and afterwards compounded the penalties: I addressed myself to Mr. Marsh, who had been a commissioner of victualling, and asked him, if at the victualling board, a hop contractor, that had cheated them, had not been excepted by public advertisement?

But we shall hear that from him.—The contract was renewed again with the very person.

At that time?—In March, 1778.

Q. to Mr. Ibbetson. What was the next time to that, after the man was convicted, that the contract was renewed?—A. Those have been yearly contracts; the second time was in March, 1777.

Q. to Captain Baillie. What is the date of the conviction?—A. June, 1776, he was convicted in the ten penalties.

Does any thing appear in the books, relative to that conviction, since the time you have read, and before the time you are going to read?—Yes, there does.

I beg that may be first stated.—Mr. Ibbetson reads: "On the 12th of June, 1776, the solicitor, by his letter of this date, acquainted the board, that in consequence of their directions, two actions had been brought against the contractors for supplying the Hospital with butcher's meat, for having served bull beef, and bull-stag beef, instead of good

fat ox beef, agreeable to contract; one of the actions on the former contract, the other on the last; that, by advice of counsel, the action on the last contract only was thought proper to be proceeded upon; in consequence of which, it was brought on to a trial, before lord Mansfield and a special jury, when a verdict was given for the Hospital, of 100*l.* besides costs of suit, and costs of the special jury; it was then immediately ordered, that he be prosecuted for the penalties on the other contract. 19th March, 1777, present sir Charles Hardy, captain Hood, sir John Major, Mr. Hicks, sir Peter Dennis, &c. proposals were given in for supplying the Hospital with butcher's meat, and Peter Mellish, jun. the present contractor, having offered to do it for 1*l.* 12*s.* per hundred weight, his proposal was found to be considerably the lowest, and was therefore accepted."

Was that Mr. Mellish, jun. the present contractor, the same Mr. Mellish who had been convicted of the fraud upon the Hospital?—I believe it is the same Mr. Mellish.

Does any objection appear to have been made?—I was not present at the board; there does not appear to be any by these minutes; I have brought the proposals hither, there were two proposals, and here they are, in the original, as presented to the board of directors; the one from Peter Mellish, which is the father, his offer was, for twelve months, at 3*s.* and 4*d.* a hundred weight. Mr. Peter Mellish, junior's, proposal, at the same time, was 3*s.* per hundred weight.

Were there only those two that sent proposals?—There was no other sent proposals.

This was in March, 1777?—Yes.

Has this contract been since renewed with this Mr. Mellish?—I believe it has. I think he is the present contractor. On the 4th of March, 1778, one proposal only being given in, by Mr. Peter Mellish, for supplying the Hospital with butcher's meat, offered at 1*l.* 14*s.* 6*d.* per hundred weight, his proposal was accepted.

I understood then from you, that this contract was renewed in March, 1777, and in March, 1778, with Mr. Mellish, junior, the same person that had been convicted in ten penalties, and afterwards compounded 100*l.* for the second time?—I am pretty certain it is the same person; the solicitor will be able to explain that; but I think it is certainly the same man that has been contracted with three times running, and who is the present contractor.

Have you, in your books, any entry of the contract upon which he was prosecuted?—I have one of the original contracts upon which he was prosecuted; this is the original contract that was made with the butcher, to commence on the 1st of April, 1775, it is dated the 15th of March, 1775.

Who are the parties?—Between Peter Mellish, the younger, on one part, and sir Charles Hardy, knt. &c.

See how the penalties are.—That if any of the kinds or sorts of meat aforesaid, so to be delivered, shall, in the judgment of the steward, or clerk of the cheque, be deficient in weight or goodness, or not cut as the same ought to be, that then it shall be lawful to cause all such meat to be surveyed by the captain and lieutenant, whosoever it shall be to do the duty of the week; and, if disapproved of on such survey, so often as they shall neglect to cut up the meat as agreed upon, to pay 10*l.* for each, or every breach or default, that shall happen in the performing this contract.

Is there not a general penalty of 300*l.*?—That is in a bond, which bears date the same day, the 15th of March; the bond is in the sum of 300*l.* for the fulfilling his contract.

Whether or not there were bonds generally given by the butcher, who had the contract made to him, before that bond; whether it was usual in your memory, to have those bonds?—I believe it was, I cannot speak positively.

Whether or not, since these complaints have been made, and the butcher has been fined, and there has been a detection of this villainy, the Hospital has been well served?—With respect to these bonds having been usually given, I see by a notation I have made, making a little abstract of the contracts made for some years back, I see in 1774, when he was contracted with, that it is expressly mentioned in the minutes, that care should be taken, that he gave the customary security; whether the Hospital has been well served since the butcher has been convicted, or compromised the other action, I can't say; I believe it will appear there have been no complaints, at least, I have heard none; but must beg to refer your lordships to the military officer there.

With regard to the notices that were given by advertisement, what time is usually given for those advertisements, for persons to deliver in their proposals?—It is sometimes advertised longer, sometimes shorter, just as it happens; generally a week's notice is given, and my clerk has it in direction to put it in most of the morning papers; and if it is a contract for woollen or linen cloth, where people may propose out of the country, there we give longer notice, but for the butcher, we generally give about a week's notice.

Were not those advertisements inserted by the order of the court of directors?—Yes; the steward generally represents that a contract is near expiring, and then the board of directors order it to be advertised. I see the notice for 1778. "On the 21st of February 1778, upon a letter from the steward, wherein he mentioned that the butcher's contract would expire at the end of March. Ordered, that notice be given in the newspapers as usual, for such persons as may be willing to contract, &c. to give in their proposals on Wednesday se'ennight."

Does it appear on what day of the week that was?—It was on Saturday the 21st.

So that the directions were on the Saturday, that the proposals should be made on the Wednesday se'ennight; does it appear how soon that advertisement was put into the paper?—We have nothing here that will shew that, without referring to the paper.

How long has Mr. Peter Mellish and his father been contracted with?—I find in the year 1764, one Samuel Mellish was the contractor; in 1765, a Mr. Land; in 1766, a Mr. Preddy; and in 1767, he only contracted for six months at a time; in 1768, comes Mr. Peter Mellish, whether he is the father or the son, it does not appear; he has it for that year; then Mr. Preddy comes again, and in September, 1769, Peter Mellish is contracted with, and again in September, 1770; in October, 1771, he is contracted with, and the Mellishes have had it from that time, without any persons besides intervening; there is one year that I have not got, which is in 1771, and whether it was this Mr. Mellish or not, I don't know; but he seems to go regularly back as far as 1771.

When was Preddy?—The last of Preddy is the 15th of March, 1769, he contracted for six months, and then Mr. Peter Mellish takes it up the other six months. In 1771, it does not appear who was the contractor, but otherwise Peter Mellish, either father or son, seem to have had it from Sept. 1769, regularly.

For how many years back does it appear that no other persons offered, except the father and son?—We don't ascertain the number of proposals upon our minutes without looking back, and endeavouring to find the proposals themselves.

Because you mentioned Mr. Mellish, the father and son, made different proposals?—In 1764, I have made notations, that there were four proposals; in 1765 there were several.

Read the names of the persons who were present in March, 1777, when the contract was renewed; what notice was there given to the Hospital, and entered in their books, that the penalties were compounded?—It was from a letter of the solicitor's; the solicitor informed the board, immediately after the action, of the event of it.

(The Solicitor's letter read, dated the 31st of May, 1777.)

Lord Fortescue. After having premised that, as this affair is likely to be a pretty considerable length, I am the last lord in this House that would desire to procrastinate it; I would ask you after these two Mr. Mellishes were out, after these things being proved, whether or not there was any fault; or on the contrary, whether the other person who was taken in upon the Mellishes being put out, to perform the contract of the Hospital, did or did not serve them with meat, so as to give general satisfaction?—The Mellishes were not put out.

Were they never put out at all?—Not since those prosecutions.

Was there no person ever put in?—No; there was on the 31st of May 1777, that Mr. Everest had commission given to compromise it on the 11th of June, 1777. [A letter of this date, from the solicitor, was read, representing, that the clause against the butcher was compromised in court.]

Were both the actions brought upon the same contract?—No; they must have been upon different contracts, because they were at different periods of time.

Read the names of the persons who were present at the renewal of the contract in 1777.—Sir Charles Hardy the governor, captain Hood the treasurer, sir John Major, Mr. Hicks, sir Peter Dennis, Mr. Barker, Mr. Marsh, Mr. Wells, Mr. James, and the rev. Mr. Cooke.

That was after the first conviction?—Yes.

Captain *Baillie* called in again.

Who first informed you about the pensioners being supplied with bull beef?—Alexander Moore, the cook's mate.

What month was that in?—In the month of June 1775.

Are you sure it was in the month of June that Mr. Moore first told you of the bull beef?—I have it in my minutes; I carried the butcher's servants and the cook before justice Pell, where they confessed on the 7th of June, 1775.

My question is, who first informed you about the bull beef? You say Alexander Moore did?—Yes.

In what month was it he gave you this first information?—It was either in the latter end of May, or the beginning of June, 1775, but I believe in the beginning of June, because I see the affidavits are sworn on the 9th.

When was it you acquainted the directors of it?—I thought it my duty to complain first to the governor of Greenwich Hospital, and I laid authenticated copies of the depositions before the governor of the Hospital immediately after they were sworn.

When did you lay them before the directors?—I did not lay them before the directors; they were laid before the governor; I desired him to present them to the directors.

The following fourteen Questions were asked by the Earl of *Sandwich*.

Did you examine William Fleoe?—I believe he was examined upon that business.

Did you examine him?—I believe I had some conversation with him upon the subject.

Whether his examination at any time was taken in writing by you, or in your presence?—I don't recollect that it was; I am not certain; I don't speak positively; I had some conversation with all the butcher's servants upon that occasion concerning bull beef.

But cannot you say positively whether this man's examination was taken in writing be-

fore you or not?—I cannot say; there were three of them that were.

Did you never give the examination in writing to any person, and to what person?—I don't recollect that I ever gave it to any person whatever; I remember very well such a man was upon the list of evidences; but that man, when it came to the day of trial, he was not to be found; he went out of the way.

That is not the question, it is a plain question, and I think I put it very clearly; you doubt whether any examination was taken before you; in order to prove whether it was taken before you or not, I desire you will here say, whether you did give to any body the examination of Fleoe?—I cannot say positively whether I did or no; I had some conversation with the man upon the subject, and I might have taken some examination from them all. I had, as I said, five evidences at first, and they all went off except two; I had the examination of one Payne and of one Largent.

I stick to my question, to which I expect an answer, whether you did or not lay the examination of Fleoe before any particular person?—I cannot answer that question, because I don't remember it; I had five upon my list at first, and they diminished away to two; one man was going to Holland, another to America, I stopped him, and got his examination.

I will refresh your memory farther; did you ever give the examination of Fleoe to the solicitor of the Hospital?—I believe that Mr. Kerr might have taken that man's evidence, but not I.

Did Mr. Kerr take it in your presence?—I don't think he did, I don't know.

That is not an answer to my question; my question is, did you or not give it to the solicitor of the Hospital?—I cannot tell you; I gave him all the information I could upon that business.

Upon what day did you give the solicitor of the Hospital all the information that you could give him?—At different times.

When did you give him the last information?—I cannot remember such a thing as that.

Do you recollect when the cause was tried?—I remember the day of the trial perfectly well.

Was the information and the examination you gave to the solicitor of the Hospital given to him the day before the trial, or was it not?—I don't know on what day it was given to him; I declare, I gave him all the information I could collect, and I was at great expence in collecting that information.

[Captain *Baillie* withdrew.]

Mr. *Marsh* called in.

Whether you have not been in the victualling office, as a commissioner?—I have.

Whether, in the victualling office, there are

cases of persons having been guilty of breaches of contract, and have been excepted to by advertisement?—Not while I was in the victualling.

Was there such an instance in the case of an hop contractor?—I have heard of such an instance, but I don't know it of my own knowledge.

Has there happened any breaches of contract, in the victualling-office, since you have been there?—There has.

And have the persons guilty of those breaches been employed again?—They have.

In what instances?—A butcher we contracted with to serve the fleet at Chatham and the Nore; he sent inferior oxen, our officer there refused them, and agreeable to our order and the terms of our contract, he went to Chatham market immediately and purchased meat at an extraordinary rate, and made him pay the difference.

And that very person was employed again?—Yes, upon a public advertisement; he was the lowest tenderer.

What were the terms of your advertisement?—Advertisements for those that would tender to serve the Hospital with ox meat.

Are there any expressions in them that mentions, that you engage the lowest bidder?—No, that is understood in course.

Was there any thing favourable in the circumstance of that man, who had been guilty of that breach of contract, that had induced you to renew it again with him?—We punished him in the first instance; he performed his contract very well afterwards.

This instance that you mention of the hop contractor?—I know nothing of that of my own knowledge; I was a commissioner of the victualling about nine years, and nothing of the kind happened in my time.

Do you recollect to have heard at what time the affair of the hop contractor happened?—I have heard of it, but never heard how many years it was before my time.

Have there been many instances in which there have been breaches of contract, in the victualling-office?—Not a great many, but the contractor was generally punished in that way.

Do you imagine it is very easy to convict a contractor that is guilty of breaches of contract?—I think so.

Don't you think it is possible for a contractor to be guilty of breaches of contract, without being found out and detected?—Not in the victualling-office.

Why so?—Because we receive live oxen at the victualling-office; the contractor had drove down live oxen to Chatham, and they were judged, by the officer there, inferior to the contract.

I am only asking in general, whether it does not very often happen, according to what you must know of that business, that contractors are guilty of breaches of contract, without it being possible to prove it in a court of justice?—I never knew an instance of it.

Did you never hear complaints of bad provision from the victualling office, being furnished on account of any ships?—I have not; partial complaints there ever were and ever will be, in so great a concern as that of victualling his majesty's navy; partial complaints there always were, and for various reasons which I can acquaint this House with.

Do you believe they were always partial, bad reasons?—Partial reasons they must be; but in the general we have been served well, and the navy has been served well.

But I ask you, whether it is possible always, with great facility, to bring a contractor to conviction?—With respect to what has been said about the commissioners of the victualling, captain Baillie has gone out of his road, and charged the commissioners of the victualling with providing bad meat for the navy; and I take upon me to say it is false.

If the victualling office had ordered a prosecution against any man for a breach of contract, do you think that they would, during a prosecution, enter into another contract with him?—I mean that after an advertisement of the lowest tenderer proved to be a Mr. Mellish, or any body else who had been supposed guilty of fraud, or had been guilty of fraud, if no other person offered, and the king's service would have suffered, as it must have done for want of meat, I certainly should have taken Mr. Mellish.

Would you at the victualling-office renew a contract with a man who, under a prosecution ordered by the victualling office, had been convicted?—Certainly I should, if the service would have suffered by not accepting him; if there was no other tenderer but himself, the service might have suffered for want of flesh.

Would you have taken any means of advertising, or otherwise, to have got proposals from some other persons, who were not under that predicament?—Not after public advertisement for a week or a fortnight before; I should think it would be to no purpose; but if there had any other persons offered, I should have proposed to have taken one, though he might have been something higher in his demands than he.

If Mr. Mellish had been excepted in the advertisement, as a person with whom the Hospital would not treat, might not other persons have offered?—I do not know whether we might not look upon it as dangerous to say that of a man in public print.

You will do well to re-consider the nature of the question, and the answer you have given the question; whether, if you had excepted by name this Mr. Mellish, as a person you did not choose to deal with, other contractors might not be expected?—I cannot say as to that question; if no other contractor tendered, in consequence of a general advertisement, I should not have thought of advertising again.

I ask you, if you had advertised with a special exception of Mr. Mellish, whether some

other persons might not have offered?—No such exception has ever been made during my time.

You are a commissioner of Greenwich Hospital?—Yes, and of the navy.

How came you not to make it the second time?—Because I apprehend the Hospital would have suffered for want of flesh.

Do you apprehend then that there is but one person in this great metropolis that is capable of contracting with the Hospital for meat?—It was evident there was not; for nobody tendered but the father, or uncle, and son, I don't know which.

Did you make the trial, by excepting Mellish, whether any body else would offer?—When it was published, nobody tendered but the two Mellishes.

Do you really believe that there was no other person in the city of London capable of undertaking the contract but Mr. Mellish?—It appears to me from consequences, that nobody cares to deal with us hardly.

Are you a commissioner of the navy at this time?—I am.

I believe you cannot be so easily imposed upon as to the nature and quality of meat which is sent to the victualling-office, because they are delivered alive; did you say that?—I said that.

Whether any man that is not accustomed to look at beasts, and to know the quality of them, may not be exceedingly imposed upon in beasts alive? I have always understood so, but it may be otherwise, perhaps?—We have proper officers, an experienced master butcher, besides other officers, to view the beasts before we suffer them to be killed. The concern is very great in the victualling-office; there are 4 or 5,000 oxen killed in a winter; they are drove into the office alive; they stand there 24 hours to cool; they are then examined by a master butcher, and by the officer of the cutting-house; and then if the master butcher and the officer of the cutting-house approve, they kill the beasts; those they do not approve of are not taken; after they are killed, they are cut up; the four quarters are put into a scale, and if they don't weigh seven hundred weight, we don't take them.

If no person offered but Mr. Mellish, could they not have entered into a contract for a shorter time, and so have got another contractor for the remainder of the year?—The board were of opinion that it would be best to contract for a whole year, for fear provisions should be dearer; that was the reason of contracting for a year; or else, generally, the contract is for six months.

Do you, as a director of Greenwich Hospital, recollect what number of men are victualled there?—I believe about 2,000, but I cannot say.

You don't know, do you, that one half of them are paid money instead of having provisions?—I don't know the number.

In your advertisement for Greenwich Hos-

pital, what time do you give for delivering in of proposals?—The secretary of the Hospital can tell the time best.

What time do they give at the victualling-office?—Generally three weeks an advertisement for a certain number of oxen, 2 or 3,000 to be killed at such a time.

I understand you that the reason you thought it was allowable to renew the contract with a man that had been proved to be guilty of a fraud was, that there was no other person offered, and it might be necessary for the service to deal with that man, because no other offered?—Yes.

And you also said, if I don't mistake, that you believed no other person would have offered, but Mr. Mellish, if the advertisement had been issued?—Nobody else had tendered to serve the Hospital for a considerable time.

Mr. Mellish is the contracting butcher for the navy too, I believe?—Yes, he is generally, but not always.

You can find somebody else for the navy?—Sometimes; but, in general, he and his family have been the contractors.

You have also said, as I understand, that, though you had found that this man had been guilty, or should be guilty, of a breach of contract, that you would be obliged to take from him because nobody else tendered?—We could not of a private butcher find meat sufficient to feed 2,000 men, therefore it was for the benefit of the service; I did not say he was the only person did offer.

Has any attempt been made to find any other?—By public advertisement.

Any other way?—I know of no other.

With regard to the complaints that had been made, I don't mean by an individual, captain Baillie, relative to the victualling-office, that Greenwich Hospital has nothing to do with: have you had no complaints of the captains of the navy, relative to the victualling-office?—There ever has been partial complaints while I was a commissioner of the victualling; since which, I have heard of none, but the partial complaints.

Explain what you mean by partial complaints.—I mean of a cask of beef turning out bad, or such a thing, there can be no bull-beef with us.

Has there not been general complaints against the provisions furnished by Mr. Mellish, from the captains of the navy at Plymouth?—Not that I know of, I am not a commissioner of the victualling.

The Earl of Sandwich. Do you know whether last year, when the contractor at Plymouth had refused to fulfil his contract, Mr. Mellish was not called upon, and went down, and was the only man that could supply the fleet?—I heard so; your lordship knows I am not at the victualling board.

Is not Mr. Mellish one of the largest, perhaps the greatest dealer in live cattle in England?—We all look upon him to be the greatest dealer in live cattle.

Is not the person who has the most of it in his possession, more likely to serve you well, than a person who is not so largely concerned?—Undoubtedly.

Do you imagine, that, if during the prosecution that this Mr. Mellish was under, there had been an advertisement for other contracts, excluding Mr. Mellish, offered, would that have prevented any other contractors offering?—I cannot answer for that, because we have had public advertisements, and no butchers tendered to serve us.

Do you imagine, that if any other person had been commissioned with an advance of public money, and to have gone to Smithfield and bought up 100, or 200 head of cattle, as you had wanted, don't you think that would be a means of furnishing the Hospital as cheap as Mr. Mellish?—I cannot say but it would.

I understand you are one of the directors of Greenwich Hospital?—Yes.

As such, whether, when it appeared by the verdict given, that fraud had been committed in this contract, you thought yourself, as one of the directors, not bound to endeavour that the like fraud should not be committed again?—As the Hospital was in immediate want of meat for a vast number of men, it did not strike me, the method the noble lord has pointed out now, nor do I know whether it was practicable.

As a public man, did not you find yourself bound to prevent frauds from being committed? Did you take care to prevent such fraud, when you made this contract with Mr. Mellish?—If the officers do their duty, who are the receiving officers* at the Hospital, no such frauds could have happened, and had the board of directors been acquainted with it in the first instance when it happened, we should have prevented it in future.

The board of directors knew at that time that such verdict had been given, and those frauds proved, my question is, whether upon your engagement with Mr. Mellish, any extraordinary caution was taken to prevent similar frauds again?—No other than a public advertisement, as I said before.

Whether or not there were not abuses from Plymouth, in regard to the provisions? I apprehend that your answer was, that you did not know that there was, but there was nobody in that part of the world who would undertake that contract but Mr. Mellish; as you have said that, I ask if there was not another person that undertook the contract for the whole of sir Edward Hawke's fleet?—I have told your lordship, that I don't know any thing of it, of my own knowledge.

Whether Mr. Peter Mellish, senior or junior, are really the same persons as to trade; are they partners, or concerned with one another?—I don't know; there was the father, the son, and the uncle, I think of that name.

Do you really understand any reason why there should be two proposals come in for Greenwich Hospital; one from Peter, senior, the other junior?—It is a common thing for contractors to get a person to tender a larger price, in order that the other may have it.

Then you understand that the offer of these two gentlemen to Greenwich Hospital was a collusion?—I do.

I think you said when you were asked whether Mr. Mellish was not so large a dealer, relative to an affair that happened at Plymouth, that there never was another man that could supply the navy: you were asked whether he was not likely to serve the better for dealing more largely, than a small dealer. I ask you whether there may be great inconveniences arise, for letting one man monopolize all the contracts of government?—Most certainly.

And whether it might not be much better for some branches of government to exclude a man when he has another contract?—The service must be distressed perhaps, without they give a large price, and even then, people tender sometimes that are not equal to it, and that give security.

You say, one man monopolizing the whole is a great inconvenience?—Certainly.

Is there not a way to prevent that?—In a public board, we take every method we can to prevent it.

You took no method to prevent it?—By a public advertisement; and if any butcher had been sufficient to have supplied the Hospital, I should have thought he would have offered.

But if Mr. Mellish had been excepted in the advertisement?—The board were of opinion we could not do otherwise, than contract with the man that offered; and I was of the same opinion with the board.

You have said, that if this matter had been communicated sooner to the directors, that they would have put a stop to this; what steps would they have taken, different from those they did, when the man was convicted?—They would, I apprehend, have prosecuted the butcher immediately, upon the first complaint.

He was prosecuted.—I did not, for my own part, know of the complaint till a year after.

But when he was prosecuted and convicted, what steps did the court of directors then take, to prevent the like thing happening again?—All they did was, making a public advertisement.

Was that any thing different from what they had done before?—It was not.

You know there is a large quantity comes to the spring markets, at this time of the year, whether that is not the kind of cattle that would come within the price for furnishing the navy, and for furnishing Greenwich Hospital?—Not for the navy.

Would it not for Greenwich Hospital?—I apprehend it might for Greenwich Hospital, I

* Receiving officers, steward and clerk of the stock, Mr. Godby and Maule. Orig. Ed.

don't know that they are confined to weight there.

As you have had experience in this matter, I ask you for information, whether you ever knew a man convicted before Mr. Mellish, upon so notorious a breach of contract, as supplying bull-beef, when his contract was for good fat ox beef?—Nothing of that kind has happened in my time.

You appear here in a double capacity; you are a commissioner of the navy, and also of Greenwich Hospital?—A director of Greenwich Hospital.

As a director of Greenwich Hospital, do you believe, upon your oath, that there are not a hundred butchers, that could supply Greenwich Hospital? What quantity of meat is eat at Greenwich Hospital?—I don't know the quantity.

Do you think there may be two beasts in a week?—I can't speak to that; there are officers here can tell you the exact quantity.

Who can inform me of that?—The steward.

[Mr. Marsh withdrew.]

Mr. Godby called in.

You are steward of Greenwich Hospital, I believe?—I am.

What is the quantity of meat consumed in the Hospital?—About 860lb. a day.

How many oxen is that in a week?—Three I believe.

Do you believe, upon your oath, that there are not many butchers that could undertake that contract?—I believe there are some, because there formerly was a butcher of Greenwich offered to serve Greenwich Hospital, and to the best of my memory, his price was two guineas a hundred weight, which would be about 6 or 700*l.* a year, I speak at a guess, more than it is at present.

Must not he be a poor butcher that could not supply three oxen a week?—At an exorbitant price no doubt they could.

Why at an exorbitant price?—A butcher of Greenwich, who is now present, served Greenwich Hospital at an exorbitant price, and lost money by it.

Did you ever hear that there was any attempt made to get another butcher to bid against Mellish?—I don't know that there was.

[Mr. Godby withdrew.]

Mr. Marsh called in again.

Whether you remember upon the proposing to contract with Mr. Mellish, captain Baillie's objecting to it?—I don't.

Do you not recollect that circumstance that has been mentioned by captain Baillie, of your having mentioned the case of an hop contractor?—It is so long since, and I am at the head of so important a branch of business, that I cannot recollect sufficient to speak to that; but if captain Baillie says I did say so, I dare say I did.

I mentioned the circumstance of the hop contractor, to bring to your memory captain

Baillie's objection to Mr. Mellish's having the contract.—I don't recollect that; the whole board of directors would have wished for any other contractor.

I understood from the minutes, that the governor laid these affidavits of the discovery of the bull beef before the board of directors?—There were no other tenderers.

You are a director of Greenwich Hospital, and have been a long time in the business: if the contract had been advertised, with an exception to Mr. Mellish's serving the Hospital, do you imagine that the Hospital would not have immediately been supplied by any person, as well as they were by Mr. Mellish? I have already said, from what happened, I fear not, because there was no other tenderer.

But there was no exception made to Mr. Mellish in your advertisement?—There was not.

If any exception had been made to them (the Mellishes) in your advertisement, that the contract would not be entered into with them, whether you do not imagine there would have been immediately proposals made, by which the Hospital would have been as well supplied as it was by them?—I cannot speak to that.

I ask your opinion; do you believe this kingdom would not have produced a person or persons, who would make an offer to supply Greenwich Hospital with beef as well as Mr. Mellish, knowing that he was not to be treated with?—I should suppose, as it was open to them, they might have tendered if they pleased.

Your opinion seems so vague?—It is an honest opinion from my heart, and upon my oath.

[Mr. Marsh withdrew.]

Captain Allwright called in.

Inform the Committee of what you know of there having been any mismanagement in Greenwich Hospital, and what complaints respecting the provisions have been made to the court of directors, or to the council?—I remember many complaints being made; I have been sent at times by the lieutenant governor Baillie into the kitchen, to see the receipt of meat, and to look at the quality; there have been complaints, and there have been complaints in the hall sometimes: I once objected to some meat being received, because it was contrary to the contract; the contract expresses, that the meat shall be received in whole quarters, except some part of the neck taken off, and the legs and shins taken away; I found there was a practice of bringing the beef into the Hospital, with the prime parts cut out of the quarters; the chines, and great part of the roasting pieces were taken from it; I had objected to that, and indeed, once in particular, I objected to it to the steward. The steward paid very little attention to my objection; I went to the lieutenant governor, as I had received my orders from him, and told him that there was little attention paid

to it; and that the steward had received such beef. The lieutenant governor, in consequence of that, ordered me to go back again and call a survey upon it, to send for the lieutenant of the week, and with the clerk of the cheque, and his clerk, to survey that meat, to call for the contract, and see whether that did not forbid the receiving such meat. I did so, I gave my opinion, the lieutenant of the week agreed in opinion with me; I asked the steward's opinion, the steward would not give his opinion; I desired him to go with me to the lieutenant governor; he absolutely refused it, and told me, that I had given my opinion unasked; that he did not send for me to give my opinion; that it was his business to send for me, and not mine to send to him.

I don't want you to enter into particulars; but, in general, have you often observed that there has been bad meat delivered to the men, and that there have been complaints made?—There have frequently.

To whom?—There have been complaints made in the kitchen, there has been some complaint made, I recollect, to the board of directors.

By whom?—It was made by the council; I was not at the making that complaint, but I was at the council when we complained of the clerk of the cheque's clerk, who had received bad veal, and I never remember any official answers from the board of directors.

Had you any redress?—I don't remember any official answer, nor any redress.

The E. of Sandwich. Were you present when William Fleoe's evidence was taken down?—I don't recollect that I was; I was present at some; I recollect that Fleoe did not attend at the trial at Guildhall. I remember he was absent then. [Captain Allwright withdrew.]

Lieutenant Kerr called in.

Give an account to the Committee of what you know of any complaint having been made at Greenwich Hospital relative to provisions in general, and what steps have been taken in consequence of it?—When I first came into the Hospital, there was a complaint that the men had been served with shins, necks, and legs of beef; I acquainted lieutenant governor Boys of it; the lieutenant governor complained to the board of directors. They immediately sent for the butcher; the meat was brought, the legs, shins, and necks, and shewn to them, and that was redressed immediately upon my complaint to lieutenant governor Boys; after that the meat still continued to be complained of. Upon my being upon duty, I complained often to lieutenant governor Boys of it, of the smallness of the pieces, and of the rather blackness, as I called it, or badness of the beef. Mr. Boys often ordered the meat to be delivered to the contracting butcher, which was afterwards complained of as illegal; they said, after the meat was boiled, it could not be returned to the butcher, or

he make amends for it; that it should have been complained of before it had been boiled. Upon these complaints, I myself thought there had been something extraordinary in it; the meat, when it came, appeared to look very well, but upon being boiled in the copper, it turned out so bad, as I being often upon duty had occasion to see. I found that the meat did not what is called spend so well, that it did not look so well, and did not seem to hang together; I thought there was something wrong when I was upon duty; I had great reason to suspect the butcher's man guilty of a fraud; and as I had often occasion to go to London, I frequently saw the butcher's man at petty ale-houses on the road. I was by a shower of rain forced into an ale-house called the Half-way-house; I saw the butcher's man selling the meat; the woman and he were disputing about the price, whether he should have three-pence or two-pence halfpenny a pound. I sat down, and heard the conversation go on; I found there was some fraud; I told nobody of it, but I was much upon my guard, still finding the meat, during a space of time, to be very short, and giving the men, when they complained, choice pieces did not seem to satisfy them; I complained many times to lieutenant governor Boys, and he could not tell what to do; I then ordered the boatswain (I cannot recollect his name now) to be upon his guard, for I told him that I thought there was a fraud; he detected the butcher's man in a leg and fore-quarter, what they call a jigget of mutton, a shoulder of mutton, and part of a breast, to the amount of 40 or 45 pounds; it was brought to the council; the butcher's man told the council that it was the surplus meat belonging to his master; he made it appear to the gentlemen of the council, I believe then, that it was surplus meat of his master. I myself, in my opinion (if I may use that expression) thought it was not, but I could not prove that it was not so: the meat was ordered to be given him; I thought myself hurt, and I let it drop for six months. I had some business called me to town; as I was coming through Kent-street, I saw the butcher very drunk in an ale-house, I did not go in there to examine, but when I came to enquire, I told the blue-frock men—but I am going too fast—on the Monday I think that I came on duty, I said, Emanuel Tucker, I am come upon duty, if you don't tell your master to send proper meat, I told him by the blessed name of God, that I would complain to the directors, and have him punished, and the contract taken from him; he said the meat was very good. The meat was complained of, I think it was the Thursday following. I will not be positive to the immediate day, but it was the beef day: I went to Mr. Boys; three pieces had been carried to the steward's office; it was thought proper, because the meat had been boiled; they were very bad, and I don't believe the pieces when cut up weighed more than five or six ounces

for a man; upon this Mr. Boys said he could not tell what to do in it.

You need not be so very particular in all this description, only acquaint the Committee, whether there have not upon the whole been complaints?—Yes, I detected the butcher's man in stealing the meat; he was tried and transported.

How long was it from the time that you first suspected these frauds till the time you made the complaint?—There were many times complaints, and many times redressed, by giving the men that complained the choicest pieces, and every pains was taken in the office to give the men satisfaction.

You said you had reason to think that there were frauds committed by the butcher from some conversation you heard at an ale-house, how long was it after that when you made the complaint?—I was suspicious of the fraud long before, from the badness of the meat, the meat being boiled and not having a proper quantity on the bones; I was called the bone-carrier of Greenwich Hospital, because I detected the bones which he had been serving.

How long after you had these suspicions was it before you made a complaint?—The first complaint that I made was of the meat; it was a year and a half, I believe, before I could be certain to make any complaint of that fraud.

Then it was a year and a half after you had suspicions before you made a complaint?—Yes.

Whom did you make that complaint to?—I never made any complaint to any body, because I could not ascertain it. The complaint that I made was of the beef at different days, that to the lieutenant governor, which was redressed immediately by the lieutenant governor's orders; but the great complaint I never made till the Monday of the week the butcher was detected; I told one Jonathan Fell, you blue frock men are all parties of this fraud, and I shall, I hope, see some of you turned out; the man, conscious of the fraud, wrote an anonymous letter to the lieutenant governor, that he would shew him where the meat was secreted.

How do you know that he did write it?—I heard the man confess that he did dictate that letter to another; I asked him that personally; he wrote that upon my saying that I had them now, I hope I shall detect you, I hope I shall have the pleasure to see you turned out, for you must be concerned in this fraud. I did not make a complaint, because I could not prove it, I only suspected in my self that there was a fraud.

Did you suggest these suspicions to any body?—I never did to any one person in the world till afterwards.

Whether you don't think it extremely easy, for a contracting butcher, in the situation Mr. Mellish was, to commit great frauds, without it being in the power of people of detecting him, and to bring proof of it?—I have been

in the kitchen, have seen the meat received, and received with great care, but who can withstand an artful cunning fellow, after the officer had received it, then we went in and detected him; if we had not gone in as we did, it would not have been in the power of man to detect him, because he said it was the surplus meat; I enquired, and found, that there was a pound and an half, or two pounds of surplus meat, therefore if he had sixty pounds, he must have stole it.

Then do you think it extremely difficult to detect frauds in the butcher?—Certainly.

It is not the butcher, but the butcher's man you allude to?—Yes.

And it is not the butcher himself, but his man, that all this transaction related to?—Yes.

But do you think it easy for the contracting butcher himself, to carry on frauds without being detected?—I cannot think it can, because there is the steward and so many other officers all there, and it is impossible for me to think that any fraud can be committed; the meat is seen and examined, if they commit it, they must be all concerned.

Whether you imagine, that the fraud of selling bull beef, and bull-stag beef, was carried on for a considerable time, before it was discovered?—Yes, I think it was; but I cannot see how that can be, when the meat is served in, so I have said several times, that I really believe this is bull beef, but I could not ascertain that it was; I have said often that I believed it was so.

Am I to understand, that you believe that there were abuses in the contract from the butcher himself, a long time before it was detected?—I do believe that there was, to the best of my knowledge, there has been meat returned, and very bad.

Did any of the pensioners ever complain that the beef was very tough?—They have; that complaint has been, and I have acquainted the lieutenant governor of it, and they have had a choice piece the next day, and every step was taken to regulate it.

Was there any particular reason ever asked, after the complaint was first made, why it was not lodged with the proper officers, the directors; was there any intimidation?—Never, none to my knowledge.

[Lieutenant Kerr withdrew.]

Lieutenant Smith called in.

Give an account to the committee, of what you know relative to the mismanagement of the Hospital, in respect to the provisions?—I have known very frequent reason to complain of the beef particularly, and many complaints were made to my superior officers; I did make it to sir Charles Hardy; I have made it repeatedly to Mr. Baillie; I not only did it from complaints of the men, but have done it of my own accord; because there is a letter from the lords of the Admiralty, dated some years back, wherein the officers in general are

reflected upon for suffering abuses, when they knew them to exist; in consequence of that letter, I thought it my duty to inform my superior officers of such abuses. One day in particular, in which I was happy to find the butcher prosecuted for bad meat, which I discovered (Mr. Everest called to tell me of it) as the meat was going forward, without any complaint being made to me by any of the pensioners; I stopped it, having seen before bull beef boiled, which I had seen in the country given away by noblemen; I took no notice of the first, second, or third dishes, but afterwards I stopped one dish, and sent them all to the lieutenant governor; at that time captain Clements did not attend so much to his duty, therefore I did not trouble him; I sent dish after dish to captain Baillie.

Do you recollect any thing about bad veal?—Certainly I do; the complaint was made very properly, as I thought, by the infirmary gentlemen; I believe Dr. Hossack and Mr. Pocock, the dispenser, were the two principal people that brought it to light; that upon its being examined, we all declared it to be bad.

Was complaint made of it?—There was.

Whom to?—First of all to the council, after that it was laid before the board of directors, to that we never had any answer.

Was it ever redressed?—I don't know whether it was, for I heard nothing about it afterwards.

Pray who receives the meat in the kitchens from the butcher?—The steward and the clerk of the cheque are the proper officers to receive it, but it is frequently left to their deputies, who, I suppose, are very worthy people for what I know, I may be deceived.

It is the duty of some of the officers to attend in the kitchen?—The commissioned officers take it in turn to attend in the kitchen, and if they see any abuses or frauds, they are to make it known.

Were you ever obstructed in it?—No, never.

Is bull beef easily to be distinguished from ox beef after it is dressed?—Yes, I think so; I had frequently seen bad beef; and afterwards it appeared before lord Mansfield, that the man was convicted upon that very action as bull beef; my own suggestion was, because it was shrivelled up, and appeared very black, and not to be full weight if it was weighed.

Was this discovered frequently?—I cannot say that, I only discovered of my own accord, after a complaint from a pensioner.

[Lieutenant Smith withdrew.]

Thursday, March 18, 1779.

Mr. Alexander Moore called in.

What are you in Greenwich Hospital?—Cook of one part of it at present.

How long have you been in the Hospital?—Since September, 1774.

What do you know of there having been

bad provisions served to the Hospital?—When I came to the Hospital, I was rather amazed to see such provisions served to the Hospital, but was not acquainted with the contracts that were entered into; being acquainted from my youth in breeding and feeding cattle, I was acquainted with these meats; I found them to be nothing but bull's flesh and bull stags, and so on, and mutton in the turn much the same as ram, and ewe mutton especially, a mixture of all sorts.

Was this only occasionally or frequently, generally?—All the time, from the 29th of September, 1774, to the 1st of June, 1775, I believe certainly there was not a lot that was killed real ox, or wether mutton.

Do you mean that it was constantly bad meat, or only occasionally?—Every day.

What, the beef and the mutton both?—The pensioners were continually grumbling; and it was so bad, that at that time of day we received more meat than we do now, because some pensioners are gone out of the house.

Did you complain of this?—I did not know what the contract was; I was a stranger; I did not know any thing about it; I was afraid. The contract was to be out in March; the people murmured a good deal; they thought some other butcher would have it; the contract was expired, and a fresh contract given to Mr. Mellish again. The very first day of the contract, nothing but bull beef came for that day; so it went on. I frequently complained to the butcher's men; I told them to tell their master the meat was not fit to eat. I asked him next day what the master said; they used to tell me the master asked who enquired after it, and they told him; the answer he gave to the servants was, Never mind them, they don't know any thing about it. I found it not bearable; I acquainted captain Baillie, the lieutenant governor; I told him there were iniquitous affairs carrying on in the Hospital; I enquired what price the meat was; he told me it was then near a groat a pound; the contract was for ox beef and wether mutton at that time; from that ten months, Mr. Mellish had very artfully in his trade killed many ewes, besides rams and ram stags, which is generally in breeding of sheep; a farmer will generally keep thirty or forty wether lambs uncut, because they can frequently sell them for a good price; if they don't turn out well, they cut them, which are not so good as wether lambs, nor so bad as rams; these rams are not known very well, only by the entrail parts, and chiefly the fat of them, as any person that is acquainted with them knows, lies in the neck; those animals that are uncut of all kinds, are very thick in the fore parts, and are very easy to be known by a person that is any judge of it.

When did you make your complaint?—On the 1st of June, 1775, the meat was amazing bad; I told the butcher's man that morning I would not take it; he was in a great hurry to

fetch the steward to pass it; Mr. Coates, the clerk of the cheque's assistant, came in, looked at the beef, said he thought it was pretty good; I said I hoped he would not take it, it was nothing but bull's flesh. The steward, Mr. Godby, came in, looked at it, said he thought it pretty good. Mr. Coates told Mr. Godby what I had said; a survey was made of the meat; captain Lyne and lieutenant Bosson, came to survey the meat. The governor was then acquainted with it; I told them not to take my word what it was, but send for any butcher in the kingdom; and if it was not bull's flesh, I would forfeit my life; however, the gentlemen went to the steward's house; they had a meeting, and the steward acquainted sir Charles Hardy, the governor; sir Charles ordered the meat to be boiled that day, and it was boiled; the gentlemen then came to taste of it afterwards; I omitted one thing in the interim of that time, Mr. Coates and Mr. Ball, the steward's clerk, wanted me to drop it, and say nothing about it any more; they would see it rectified.

Who are they?—One is clerk assistant to the cheque, and the other to the steward; I then thought I was wronging my own conscience; I thought, if I should be called upon to come, I was not satisfied in my own mind. I saved some pieces of that meat particularly, and acquainted the lieutenant governor of it, and told him what it was; he then, I suppose, acquainted sir Charles Hardy; and I told the lieutenant governor, that the butcher's servants that day had said they were sorry they should bring such meat down to Greenwich Hospital, but they could not help it, it was their master's orders; I asked them if they would choose to say that before the lieutenant governor, or any justice of peace; they said they were willing to say it any where; they were very much ashamed to bring it down.

What is the difference of the price of the meat that was furnished for that ten months, and the contract price?—I look upon it that bull beef in any part of the country is not worth above three half-pence a pound; Mr. Mellish in his business, I look upon it, might buy it alive at a penny a pound.

You made your complaint you say on the 1st of June to captain Baillie?—Yes, and to the proper officers of the Hospital.

You mentioned that Mr. Godby's clerk, and the clerk of the cheque's clerk had persuaded you not to take any notice of it?—Yes, that very morning.

Did any body else persuade you at any other time not to take any notice of it?—Yes, afterwards, but not that day.

Give an account of that?—On the 9th of June, 1775, nine days after that date, Mr. Baillie went up with captain Allwright to London; two of the butcher's men met captain Baillie at justice Pell's, in Well-close square; they were willing to give in their affidavits that they had, from the time that they lived with Mr. Mellish, never at any time brought

any parcel of real ox beef or wether mutton down all the time that they lived with Mr. Mellish, both of them.

That was not to your knowledge; you did not hear them say that?—Yes, I did, and gave my affidavit to the same on the same day.

It is no matter what they said; but what did you say? What other persons endeavoured to persuade you not to make this complaint known?—After this was done, upon the 11th of June, which to the best of my remembrance was Sunday, at night Mr. Godby sent for me to his house, told me there would be some enquiry upon the complaints of the meat, begged that I would not say that any bull beef had been delivered into the Hospital; I told him my conscience cannot do it; he said he was very sorry that I did not acquaint him sooner; that he would not have accepted of it; I told him I had told him enough of it before.

What did he desire you to do?—He desired, that if I should be called, to say that there was no bull beef ever delivered to the Hospital.

Repeat that conversation that you had with Mr. Godby directly as it happened in point of time?—Upon the 11th of June, a Sunday night, Mr. Godby sent for me to his own house, and in his own parlour he told me, that there would be some enquiry made about the meat; he hoped I would not say any thing that there had been bull beef delivered to the Hospital. I told him that I certainly could not deny the truth; that I certainly must speak the truth; that there had been all the time I had been there.

What did Mr. Godby say about it?—Mr. Godby did not say any thing farther about it; only he said, if I had told him of it before, he would not have accepted of it; I repeated that I had told him several times.

And had you in fact told him?—I did on the 1st of June, and told him it had been so all the time I had been there.

To what time did Mr. Godby refer, when he said if you told him before; did he mean before the 1st of June, or any other time?—No such words passed as that.

What did you understand that he meant, when he said he wished you had told him so before?—I cannot tell what he might think when he said that.

Did any body else endeavour to persuade you not to speak about it?—Yes, upon the 12th or 13th of June, the rev. Mr. Cooke sent for me to his apartments, and had a good deal of conversation about the meat, and said he thought that bull stag beef, and such like, was very good for the pensioners, as they are well clothed and laid in good beds, and so on; that he thought it might do very well; I reasoned a good deal about it; told Mr. Cooke that there was as much difference between bull beef and ox beef, as between a piece of coarse hop-bag and fine cloth.

Did he endeavour to persuade you not to

say there had been bull-beef?—He did not say much about that; he only argued that the beef was so and so; he did not persuade me.

Was it all bull beef? From the time you came there, had you no good beef?—Often we had a good quarter; but a mixture of that sort.

But, in general, during the whole course of that ten months, from September to June, was the beef bull or bull-stag beef, or good ox beef?—It was all in general very bad.

Do you imagine, for instance, that there was any day that passed in which it was all good?—Not one.

Was there any day in which there was no proportion of good?—There might be one part or two parts good; one very good quarter; two quarters will do at one kitchen; there might be one quarter of bull or bull stag, and one quarter made up of fairish good sort of meat?

That is half and half?—Not so much; most worse.

The days you speak of there was one quarter of the right sort of beef, and one quarter of this sort?—Sometimes.

Did that happen every day?—No.

How often did it happen?—It might be once a week or so.

How many times did it happen in the whole year, that bull beef was brought in instead of ox beef?—There never was a day, for ten months, that a real lot of ox beef was brought in.

What did you mean by saying, just now, that once a week it happened?—That a quarter might be good, and the rest bad.

What was the proportion of good and bad? What was the whole quantity brought in?—About 460lb. a day to each kitchen.

How many pounds of that 460lb. were bad beef?—May be 300lb.

And this happened every day, or once a week?—Every day.

Every day during all that time?—Yes.

How long have you been at Greenwich Hospital?—Ever since the 29th of September, 1774.

Has this practice of giving bad meat to the men prevailed ever since?—No.

In how much of that time have you had good or bad meat?—Since the butcher has been convicted it has been in general very good.

Before the butcher was convicted, how long had you bad meat?—For ten months.

And since that time you have had tolerably good meat?—Yes.

Have you had any bull beef since?—No, none I believe.

Explain what you mean by bull-stags?—It happens among those animals of bulls they are subject to a disorder, they call it, that they take firing; after they are past serving cows, they are cut.

Do you mean to say, that from the time these complaints were made, in June, 1775,

that the butcher altered his behaviour to the Hospital, and gave you the meat he ought to do?—Yes.

Would an inspection of the meat shew how long that bull had been cut? Can you distinguish if it had been cut a considerable time before? Can you distinguish that from ox beef?—Yes, very easy, either dead or alive; more alive than dead.

How do you distinguish it?—By the shape and make of them; these animals are very thick in the neck, from an ox that is cut when it is young.

In the mean time that you found this bull beef and bull-stag beef delivered into the kitchen, that you had not made any complaint, had you been advised by any friend, for your own interest, to hold your tongue upon it?—No.

You will explain that matter, about the beef being good since the prosecution.—It has been very good in general; sometimes no butcher in the kingdom can make it all alike; sometimes there have been lots of beef and mutton that were not extraordinary.

Were there any complaints in 1776, or 1777, respecting sow-pork?—Yes, it will be two years, the 22d of April next.

Then it was in April, 1777?—Yes; it was the pork day, before the Founder's day, as it is called.

What butcher was it from?—Mr. Mellish.

How was it complained of?—I believe it would have passed without any complaint; I did not mean to make any complaint of it; I did see it. A lieutenant, who had no meaning, happened to speak of it in the council-room; and on the Friday night, and the next board day, the gentlemen of the Hospital, the steward, and clerk of the cheque, and some other people, wrote against this lieutenant to the board, for mutiny, for saying there was sow pork in the bin that day.

But you are a judge of the matter; was there sow pork delivered in March 1777, or not?—Yes; there was one sow delivered with the teats cut off.

Was there only one sow?—Only one.

That has not been repeated, has it?—No, never.

How much pork was sent in that day?—Between 13 and 14 cwt.

How much did that sow weigh?—We did not weigh one by itself; it is all weighed in one scale. [Alexander Moore withdrew.]

Captain Baillic called in.

Whether you received, at any time, any thanks from any body for prosecuting, in this business, either of the butcher or of the servants?—I received a very honourable testimony of my poor services, in the transportation of the butcher's servant, from the first lord of the Admiralty, when he was transported.

In what manner did you receive that testimony?—I had written a letter to his lordship,

upon that occasion, setting forth the abuse that had been committed in the Hospital; and his lordship was pleased to send me a letter acknowledging, that my services were very laudable, and, in his estimation, very proper and right.

Have you that letter about you?—Yes.

I suppose the noble lord has no objection to its being read?

The Earl of Sandwich. Not in the least.

Captain Baillie then read the following letter.

“Admiralty, Oct. 6, 1772.

Sir; I was favoured with yours some days ago, and think your activity, to bring the perpetrators of the late abuses to justice, highly laudable; and I should imagine you must feel much self-satisfaction, as I am satisfied you have done yourself real credit. This, however, makes me much at a loss to understand, why you are uneasy in your situation, nor can I guess what sort of retreat you have in view; as nothing occurs to me, in this department, that can be an object of your pursuit, after your retirement upon the noble foundation where you are now settled.—I am, with regard, your most obedient, humble servant,

“SANDWICH.”

“To Captain Baillie.”

What made you uneasy in your situation, as you have represented?—When I was a captain of the Hospital, I clearly saw that if ever I arrived at the lieutenant-government of the Hospital, that I had a torrent of abuses to stem; which made me very indifferent about any preferment in Greenwich Hospital; and even at that time of day, I would have gone out of the Hospital upon any terms; and after that represented my situation to lord Sandwich, and would have gone to any part of his majesty's dominions, to have gone out of Greenwich Hospital; but it was my fate to stay there, and I have discharged my duty, in every part of my office, to the best of my ability.

Were there any thanks about the butcher?—When the butcher was prosecuted, and when depositions were taken before Mr. Pell, I inclosed authentic copies of those depositions to the first lord of the Admiralty, and was quite astonished that I received no answer or support from his lordship upon that occasion; and upon an interview with his lordship afterwards, I was received in a manner that I did not expect, in a very cool manner. I entreated his lordship to take the contract from Mr. Melish; that a man who had cheated the Hospital, by both himself and his servants, would persevere in the same kind of conduct; and I believe he has, till since the last conviction.

What time was it you sent an account of your detection of the butcher?—Soon after the 9th of June, I inclosed the depositions already mentioned to his lordship; I did not choose to write to the board of Admiralty, because I thought it would not be proper to disclose the whole internal management of Greenwich

Hospital to the board, therefore I sent it more privately to his lordship.

Inform the committee what number of clerks, deputies or servants, who are not seafaring men, have apartments in the Hospital, and those that have wards?—I believe in all, twenty-six, twenty-seven, or twenty-eight officers, under officers, and servants of the establishment, that are actually lodged within the walls of the Hospital, and some in the wards of the pensioners; if your lordships please, I will begin with Mr. Eden; he has a large apartment at the south end of the buildings, called Queen Ann's Buildings. Mr. Ibbetson has a very handsome and spacious apartment, at the other end of the same building, two large stair-cases leading to those apartments, communicate with several of the wards in that quarter; these stair-cases are not enclosed, but the avenues leading to the several wards are enclosed for the private convenience of these gentlemen; I have been often obstructed in my duty, in visiting those wards, because there now remains only a narrow staircase leading to them; it has been my pleasure and my pride, to shew that Hospital to several foreign princes, particularly to the prince of Brunswick, two princes of Hesse, &c. &c. but that quarter of the Hospital is not now shewn to strangers upon that account, not to mention the other inconveniencies. There are, besides, the rev. Mr. Cooke; he is lodged there as chaplain of the Hospital; the rev. Mr. Maule, and Mr. Godby, have handsome apartments, Mr. Godby has had an addition to his apartments; the secretary to sir John Norris brought up a large family in that apartment, without requiring any addition to it; Mr. Godby has had an additional room or two since, his apartment not being thought large enough.

What was that room taken out of?—I believe part of one of the offices, either out of his or the treasurer's-office, an exchange was made upon that occasion.

Upon the whole, there are twenty-six or twenty-seven landmen, who are lodged in the wards of the pensioners?—Not so many landmen actually lodged in the wards of the pensioners, some of them are in apartments in the Hospital.

How many are lodged in the wards?—Francis Cook, secretary's clerk, has a handsome apartment in the wards of the pensioners, I believe little inferior to a captain's apartment; he occupies to the amount of twenty-four or twenty-six cabins.

How many cabins of pensioners do you think are occupied by officers in the House?—If I include the officers, there are several officers lodged in that part of the building, that was originally intended, certainly for wards, because the proper apartments are occupied by others, who don't appear to me to have a right in the establishment; lieutenant Gordon is lodged in a part of the Hospital founded for wards; lieutenant Kerr, the clerk

of the cheque, the two matrons, and the clerk of the works, but there are about forty-eight or fifty cabins occupied by intruders, that have been cabins during my time.

Upon the whole, how many cabins of pensioners are occupied by officers?—Really I cannot tell how many cabins, because some of those cabins were occupied before I came into the Hospital, but there are about forty-eight so occupied, that have been cabins, that I remember the greater part of, if not all of them.

Is there any objection for want of room for the pensioners?—There is certainly room sufficient for the number of pensioners that inhabit at present, but there are always seamen waiting in expectation of admission.

The Earl of *Sandwich*. Was that the answer, that there were always seamen waiting to be admitted?—A. I understand there are always people coming down to Greenwich Hospital, intreating for admission.

Do you say, that you know that there are seamen waiting to be admitted?—I have often heard it.

Speak from your own knowledge; do you know any such thing?—I know an extraordinary instance of a seaman, that did not get admission into the Hospital; I don't know at present.

Whether you don't know of any vacancy at the present time for pensioners?—I am not in office at Greenwich Hospital at present.

I ask you if you don't know that there is any vacancy for pensioners? How can you say that there are seamen waiting to be admitted?—I understood it to have been always the case, that there are a number upon the list at the Admiralty.

Do you say it is so now?—I don't say so by any means, because I don't know the list of the Admiralty; I cannot judge of that.

Be so good as give the remarkable instance you mentioned that you have known?—I knew a particular instance of a seaman, who was recommended by admiral Barrington, to be admitted into Greenwich Hospital, the man died in Greenwich, in the room of a messmate of his, that was a pensioner in Greenwich Hospital, he died with twenty years servitude in his pocket, which I can produce; he had been at the Admiralty between the examinations, they examine but once in three months, and he (between the examinations) died, and did not get admittance into the Hospital. I don't mean to bring any charge against any person, for that it might be an accidental thing, and I believe it was.

How many examinations do they go through at the Admiralty?—I cannot say as to that; I believe but one, on the first Thursday in the quarter.

How many pensioners are lodged in the Hospital?—Two thousand one hundred and sixty-nine, besides nurses and boys.

Do you ever remember a time when more were lodged in the Hospital than now?—I believe there never were more.

Then where is the difference between one time and another? if there is always sufficient for this purpose, and there never was more, the wards of the pensioners might be as well given up for other purposes as not?—It would hold more pensioners, fifty more, if those cabins were given up for that purpose; when I came into the Hospital, there were not above 1,500 pensioners, they are continually increasing; as the funds of the Hospital increase, so the pensioners increase, because I humbly imagine, there are always objects sufficient; we have 500 outpensioners now.

Where was the mischief in taking off 48 or 50 of these cabins of the pensioners, when the remainder of the Hospital was more than sufficient to lodge all the pensioners in it?—There are more than 500 out-pensioners now, I dare say, every man of them would be glad to get into the Hospital if they could.

Are they out-pensioners from choice, or how is that?—The one has 7*l.* a year, the other has a much better establishment.

How many out-pensioners are there now?—It is uncertain to say now; I believe about 500; some of them go to the East-Indies and abroad; it is difficult to ascertain them.

How many men might be admitted, if those out-pensioners were to be received?—If those gentlemen I have named were removed, I suppose the Hospital would contain 200 more.

But if they were removed, would there be room to lodge so many more pensioners conveniently?—If the persons that have no right to Greenwich Hospital were removed, there would be room for a great many more than there are now.

The eleven following questions were asked by the Earl of *Sandwich*.

Do you mean that all those apartments of the Hospital have been cabins formerly?—No, I do not mean to explain myself in that manner.

Have these cabins been taken away from men that inhabited them?—Yes, about 48.

About 48 have been taken away. Was the number of pensioners dismissed when they were taken away?—I don't say that they have been turned out of Greenwich Hospital, but there have been so many less admitted.

Less admitted? there is a certain number established: when those cabins were taken away to be fitted up for rooms for the officers, whether all the pensioners had not been admitted?—Nobody has been turned out of the Hospital, but those apartments have been destroyed, and other apartments made up for pensioners.

If those officers were turned out of the Hospital, must not lodgings be taken for them in the town, or some where else?—No; because I don't understand that they have any right to the establishment, those clerks that have not been at sea.

Suppose they had been all seamen, you will allow; I suppose, that it is necessary to have

some clerks and people to go on with the business of the Hospital?—Yes; but I don't think that a charity like Greenwich Hospital, should be incumbered with people that have never been at sea in their lives.

But supposing those clerks were all seamen, then are they, or are they not, necessary for carrying on the business of the Hospital?—The business of Greenwich Hospital cannot be carried on without clerks; but there is such a number of landmen lodged in the Hospital, that they out-number the sea officers in proportion, because those twenty-six or twenty-seven are more than we have captains or lieutenants, or naval officers, in the Hospital.

Does not a man who has been at sea take up as much room in a bed, or in an apartment, as a man who has not been at sea?—One of these men take up six, nay, ten times as much room as a common pensioner.

But a pensioner or a clerk, being a seaman, takes up as much room as a landman, does he not?—One of those clerks takes up much more room.

You were asked by the noble lord, whether one man does not take up as much room as another?—Certainly so.

Did the taking away these fifty cabins leave less room for the pensioners than formerly?—Certainly.

Earl of Chesterfield. How came you in your letter, after the fire, to desire that a lodging might be appointed for you; after that fire you say there was room for all the burnt out pensioners, and for you into the bargain?—In the first place, the service has required the aid and assistance of a great number of pensioners from Greenwich Hospital; I did myself procure 250 or 300 men to fit out the different ships in the river; when, before my return from Brighthelmstone last year, they could not raise above 40; the men burnt out are, I apprehend, lodged in their cabins; there are about 200 more have leave to lie out of the Hospital with their wives and families; and I conclude, of course, that those men's beds are occupied who lie out.

How came you to write such a letter from a conclusion? How many cabins were destroyed by the fire?—I was not in office then; about 250, I imagine, or 300.

If the clerks lodged out, would not their lodging be liable to be paid for by the charity?—There is no such establishment.

If the handsome and spacious apartments which are allotted to these gentlemen were contracted, so as to give them a decent and convenient habitation, would not the Hospital, upon such an alteration as that, be able to contain a great many more pensioners?—It would be very difficult to contract some of those apartments, unless you put the officers only upon one floor; that part of the building was intended originally as a palace; it was not finished in snug small apartments.

Then I understand you it would be difficult, or very inconvenient, to convert some of

these apartments into pensioners' wards or cabins?—Some of these apartments might be easily converted into apartments for the lieutenants who occupy wards, and then the pensioners might be put into their apartments, which were intended for wards.

They could make such an alteration to make it convenient for the officers?—Yes.

And what do you think might be the number of pensioners that might be added to the Hospital?—Fifty. Some of them might be altered in a short time and at a little expence.

And should you have room enough then to lodge the officers who are lodged there at present?—No; I speak of the clerks, who I think have no right to lodge there at all.

Have there not been considerable enlargements made to the apartments of several of these officers?—Yes, some additional apartments.

Have they been considerable; and to what amount?—In 1771 or 1772, eleven cabins were taken away to accommodate Mr. Ibbetson; I complained of it to the lords of the Admiralty, and that was redressed.

I want to know what have been unredressed?—The secretary's clerk, the clerk of the cheque's clerk, the steward's clerk, have had apartments, which have not been redressed.

Are those apartments taken from the pensioners' wards?—Most of them were.

Were the additions to the steward's clerk taken from the pensioners' wards?—No; that was a part taken in the new building that would have lodged a lieutenant very well.

The Earl of Sandwich. Whether I did not myself make it my business to have Mr. Ibbetson's cabins immediately restored to the pensioners?—I had the honour to lay that complaint before your lordship at the Admiralty; I waited all day; I had no answer of any sort directly or indirectly, and never knew that the cabins were to be restored till I saw them putting up again.

The Earl of Sandwich. I have not had an answer; my question was, whether you don't know that the moment I heard of these cabins being pulled down I made it my business to call a general court, and ordered them to be put up again in three weeks?—They were put up again.

The Earl of Sandwich. And you don't know that I ordered it?—No.

Pray do you know whether the revenue of the Hospital will bear the addition of more pensioners than are in at this time?—I believe, if there was the same sort of frugality in every other department in the expences of the Hospital that is held out towards the pensioners, it would: the directors are reserved and sparing in every thing that concerns the pensioners, such as their shoes and stockings; in every article concerning the pensioners; and in my humble opinion, great part of the revenue of the Hospital is laid out in many unnecessary alterations, reparations and buildings, when we have not money to pay for it.

As it is, I desire to know whether the revenue of the Hospital will bear more pensioners than are now in it?—I can't pretend to answer that question precisely, the expence of the pensioners now is 30s. or 32s. per man, per annum, more than it was, and I positively say the necessaries have been worse.

Do you know that any money has been applied for to parliament this year and the last towards the support of Greenwich Hospital?—I have not seen the votes to know what has been done this year; but I believe in the last three years they have had 15,000*l.* 6,000*l.* 4,000*l.* and 5,000*l.*

I think you said there had been about forty-eight cabins taken from the pensioners since your memory, for the increase of the apartments of different officers; did you say so or not?—I don't speak exactly to forty-eight, but thereabouts, it might be two or three more or less.

Were there additional officers accommodated, that it was necessary to take these cabins?—There was no officer accommodated, but these clerks, in that part.

Where were the clerks lodged before?—Some of them had no lodgings in the Hospital before.

Was the business of the Hospital carried on as well before as it has been since?—Much better; there was not then that faction or party of landmen that there is at present.

Was the duty of the Hospital carried on better or worse?—Full as well; because they have introduced not only themselves, but their wives and families.

Whether these forty-eight cabins, or thereabouts, were taken for the purpose of putting in them fresh officers, or clerks, or servants, or were they for enlarging the apartments of those gentlemen?—I believe the greater part were for entire new apartments; there was one apartment that was appropriated for the use of the governor's clerk. In consequence of so many cabins being taken away before, there was not room for the pensioners, and then that apartment he had was converted into cabins, and another apartment given him in the new building.

Where were the chief of those clerks and people lodged before those forty-eight cabins were applied to their use?—I don't know that they had any lodgings but what they paid for in the town on their own account. For instance, the secretary's clerk; he has no business in Greenwich Hospital but once in three weeks for about two hours; the boards of directors are principally held in London.

You were asked if there is not a fixed number of pensioners in Greenwich Hospital? Do you know of any fixed number?—I don't know of any fixed number, according to the room we have; the men have increased considerably.

Is there not always a certain, fixed number that are upon the establishment there?—Ac-

cording to the number of cabins we have to accommodate them.

This goes to the former point; you don't build cabins, do you, unless the revenue will pay the building of the cabins, and for the nourishment of the inhabitants of those cabins? Do you think it for the advantage of the Hospital to lay out money in building cabins, when you can't afford to find provisions to maintain the people that are to inhabit them?—I think it would be much more for the benefit of Greenwich Hospital to find cabins for pensioners, than to lay out 1,500*l.* at one stroke, for cleaning the Painted-hall, and 1,200*l.* for obtaining a new charter.

You said, heretofore, several of the clerks were lodged out of the Hospital; I should be glad to know, whether they had any increase of salary to provide lodgings? Or were lodgings provided and paid for out of the Hospital's funds?—I believe one steward's clerk had a little matter allowed him, to pay for a lodging in town. In that case, neither his family, nor children, nor servants, were entailed on the Hospital, which is a great expence to it.

When he got an apartment in the Hospital, was that little taken off?—Certainly.

You say by receiving the wives and families into the Hospital, that they become a burthen upon the Hospital. Are they maintained by the Hospital?—The surgeon and apothecary's bills run high; they are entitled to the advice of those persons; that entails not only one but ten persons, perhaps. They are allowed several other little things, beside their apartments; and small beer without excise, and all those little kind of things.

The Earl of *Chesterfield*. Has your family been any expence to the Hospital?—By the institution of the Hospital, every officer's family is allowed those indulgences.

Was your family any additional expence to the Hospital?—I believe not more than any other officer; I believe a great deal less than any other officer's family in the Hospital.

If I understand you right, those additional officers that were lodged in the town, are lodged in the Hospital now; by which means they have removed about forty-eight cabins, or thereabouts?—I don't know where they lodged before; they did not lodge in the Hospital; some lodged in London, some in Deptford.

You have been asked, whether it would be advantageous to the Hospital to have more cabins than they have a fund for providing for the people? You were, I think, asked that question?—I was.

What was your answer to that?—Certainly, I think, parliament would not begrudge a small matter to the seamen of the Hospital, if the revenue should fall a little short.

If I misunderstood you, you will set me right. Did you not say you think there might be a great many more pensioners maintained, if there was a proper economy in the Hospital?—I do think a considerable number more; I think so sincerely in my conscience.

And in that case, if there were more pensioners, would not the additional cabins, that are now given to those officers and servants, be wanted for them?—Certainly.

May it not be an inducement to those officers, knowing they would be turned out of their cabins, not to increase the number of pensioners?—It does not depend upon those officers.

If the fund was increased for the pensioners, might there not be more rooms made in the Hospital for pensioners?—Certainly there might.

Without removing those officers you complain of?—I don't know that there could.

Was there any room, before the fire, to put up more cabins, without removing any of the clerks out of the Hospital?—I believe not, unless the infirmary were to be filled; we always keep a little spare room, in case of any epidemic distemper.

How many spare rooms do you keep?—Thirty or forty cabins, I believe, from memory.

The Earl of Sandwich. Were not some of those rooms taken away, and had cabins put in them, since I have been at the Admiralty?—There have been some fire places taken away, to make more room at a very considerable expence.

But has it been done?—Yes; but if the clerks had been removed, it would have been done without any expence hardly.

Don't the out-pensioners come up here every year, to receive their pay?—No, at their own pleasure, as it suits them; sometimes they make a voyage to the East or West Indies, and then come and get their money, or it is paid to their attornies.

Suppose they are in England, are they not obliged to come and receive their pension?—Not unless they choose it; their money is remitted to their attornies.

Without their coming up?—Yes, without the expence or trouble of coming up.

There are out-pensioners live as far off as Liverpool?—In all parts of the kingdom.

Do you know any at Liverpool?—Not particularly.

But you say there are some who would wish to be in-pensioners?—I believe the greater part of them.

Have they some difficulty to receive their money?—I don't believe they have any difficulty to get it; it is always paid regularly.

You think it an advantage to be an in-pensioner?—Yes.

How many out-pensioners do you think there are now, that would wish to be in-pensioners?—I dare say more than half, three quarters perhaps; there are very few but what would wish to be in Greenwich Hospital.

How many in-pensioners do you think there are at this time, that are not seamen?—I believe they are all seafaring-men; I don't know any abuse in that particular; I don't know of any such.

Whether it is necessary for an out-pensioner to come to London to receive his pay?—No, I believe it is not; they have it remitted to them, with all facility, to the different collectors where they happen to live.

Inform the committee what money is given to the pensioners of the Hospital, instead of provisions?—There is a great deal of money given to the pensioners instead of provisions, I believe to at least half the pensioners. We have near 2,400, including pensioners, nurses, and boys, and I don't think we feed, upon an average, 1,000.

Please to repeat what you have just said?—We have 2,169 pensioners, 130 nurses, and 140 boys; out of that number, amounting to about 2,400, we feed about 1,000.

What are the persons that have money, in what manner, and on what account?—There is first of all a list, that is called the money-list; that money-list was originally the full value of the pensioners' allowance, when that was first instituted, how long ago I can't tell; I believe it took place about the year 1730, or since perhaps, I cannot say; the provisions of a pensioner were then estimated at 6d. per diem, I consider it now worth 7d. or 7½d.; they are paid only 6d. that is a saving to the Hospital.

How is that granted? Is it granted to every pensioner who chooses to ask for it?—It is a sort of favour granted by the directors of the Hospital; there was a great abuse in that, but now it is only done by the recommendation of the physician and surgeon; that list has increased to very near 400, I believe.

And at the recommendation of the surgeon, money is given to these pensioners? What is it given in lieu of?—All kinds of provisions whatever; it makes them a sort of out-pensioners, for they don't even muster.

Do they lie in the Hospital?—Yes; unless the council give them leave to lie out, which is sometimes granted.

They receive sixpence without any deduction?—Yes, without any deduction whatever.

How does it appear that this is a saving to the Hospital? Is 7½d. charged?—No, but if they were victualled, it would certainly cost that.

Does that saving go to the charity stock?—I believe it is not applied to that purpose.

What were the abuses that occasioned that alteration that you say has happened there, that now it is only upon the recommendation of the surgeon and physician?—That list increased so much, that it took the men off the butler's and the chalk-off list, which are appropriated to the purposes of the charity; as the charity suffered by their being taken from the butler's and the chalk-off list, it was thought necessary to put some restraint upon it.

What number have now the money allowed in lieu of provisions?—From 350, I believe, to 400.

What is the chalk-off list?—It is a list that

every man indiscriminately, upon his first admission into Greenwich Hospital, is put on whether he likes it or not; in short, they don't ask his consent, but they give him money in lieu of meat and cheese twice a week; that instead of having meat five times a week, they have it, upon an average, about three times; there is a profit arising from that, one fifth part of the original contract price is deducted; the profit goes to the charity stock.

How much are they allowed?—There is one fifth part deducted from the contract price.

Upon what articles?—Upon the meat, and upon the cheese; for instance, they get about 2½d. for a pound of meat, which costs perhaps 3½d.

What becomes of that? Is the meat furnished by the butcher and then sold again?—No, it is not furnished.

And then is that set down, as so much furnished by the Hospital?—No, they only set down what is received, certainly.

How is the difference applied to the charity stock?—The men are paid less money for their provisions than the contract, and the difference between what they pay the men, and what would have been otherwise paid to the contractor, is appropriated to the charity stock.

And that is instead of meat and cheese?—Yes.

For how many days in a week?—Upon an average, about twice in a week; in order to induce these men to submit to that regulation, they are allowed broth made out of the other men's meat; so that they have that indulgence alternately, because every man alike is subject to that regulation.

Are all the men in the Hospital indiscriminately subject to this?—Yes, except those upon the money-list and the butler's list: I was going to say that by that regulation the broth is much impoverished, because we make broth for 400 men that do not boil meat in the copper, which impoverishes the broth, and such poor broth brings disgrace upon the Hospital.

What is the butler's list?—The men on that list sell all their allowance, except beer; they cannot sell that, because it would probably bring excise upon the Hospital; besides, it is better than they can buy for the money they would receive, there being no excise upon it. There is one-fifth part likewise deducted from the original price of the rest of their allowance, which is applied to the charity stock.

What is the consequence of this? Do you imagine that it is productive of any disorder or drunkenness in the Hospital?—It causes a scene of dissipation and drunkenness throughout the Hospital; for seamen are like children, they have little or no thought for themselves.

Have there been any complaints made upon that subject to the proper officers?—The board of directors themselves took notice of this scene of drunkenness and irregularity in the Hospital, and desired the council to enquire

into the cause of it; the council did so, and reported to the board of directors unanimously, that they thought it owing to the chalk-off list that occasioned all that drunkenness and irregularity in the Hospital.

Be so good as to point out the minutes of the council upon that matter?—It is in the minutes of the council of the 9th of August, 1776.

Mr. Ball (Clerk of the Council) called in.

Read the minutes of the council of 9th August, 1776.

Mr. Ball read the following Minute:

“A minute of the board of directors complaining of the irregularity of the pensioners, was laid before the council, who were unanimously of opinion, that the money list and butler's list, since the great increase of pensioners, is now become necessary and expedient, having no place at present to accommodate them at the tables, where only 1,250 can commodiously dine; besides which, it contributes to the ease and satisfaction of those who have families, by dining with them, and also from the confinement of attending twice a day at the hall for their provisions. That the chalking off the pensioners, and giving money indiscriminately to all upon their first admission, is not only contrary to the establishment, but injurious to the health and morals of the pensioners, and is attended with many inconveniencies, improprieties, and irregularities; and the council are unanimously of opinion, that the said custom ought to be totally abolished, there being sufficient room in the dining halls to dine all the chalk-off men.”

You keep the minutes of the council?—Yes.

You don't keep the minutes of the court of directors?—No, Mr. Ibbetson keeps them.

Mr. Ibbetson (Secretary to the Directors) called in.

Do you know of any answer that was made to the minutes of the council of the 9th of August, 1776?—I don't know of any answer that was made immediately to the council upon that business.

Were any steps taken in consequence of it?—I will read to your lordships what passed upon that occasion.

“On the 3d of August, 1776, the board taking notice of many inconveniencies which attend the practice of the pensioners selling their provisions, and also that of their being chalked off, and money given them in lieu of their meat upon admission into the Hospital on account thereof, instead of having the allowance of meat, according to the establishment five days, they have it only in their turns, three days in the week, and improper uses made of the money so received by them in lieu, &c. &c.

“Resolved, that the council be desired to report their opinion to this board on Saturday

next, if the abolishing the custom of chalking-off, and giving such money in lieu, which appears productive of so many irregularities, &c. will be attended with any, and what improprieties and inconveniencies. That the board meet on Saturday next to take this matter into consideration.

"On Saturday following, the 10th of August, a minute of the council of the 9th instant was read, in answer to a reference from this board, whereby it appears, that they are unanimously of opinion the money and butler's lists should be continued, but the custom of chalking off should be totally abolished, to prevent their making improper uses of the money so received by them, in lieu of meat and cheese. The farther consideration of the money and butler's lists, and chalking off the pensioners, are postponed," and nothing seems to be done upon that occasion.

My lords, I was absent through illness; and the motives of it, and how it came to be dropt, I cannot say, further than the minutes say.

Was there no further step taken upon it?—No.

That practice continues to this day?—There has no alteration taken place that I know of.

[Mr. Ibbetson withdrew.]

Captain Baillie called in again.

Whether you know who instituted this custom of the chalk-off list—In whose time was it instituted?—It was before my time.

Don't you know who was steward of the Hospital when it was instituted?—I cannot speak upon oath to that, I believe it was Mr. Bell, a former steward—it was done before I came into the Hospital.

Did you never see it in a book that it was Mr. Bell?—I have, in a book lately published, called "A State of Facts," but I don't know positively that that is the fact, because I see it there in print. [Captain Baillie withdrew.]

Mr. Ibbetson called in again.

Whether or not you think that the giving of money instead of the allowance of meat, has been the means of increasing drunkenness, idleness, and dissipation in the Hospital?—For one, I cannot conceive that it has, because, if the pensioners had been permitted to go on, as they did at the time that that regulation was made, which is now upwards of 50 years ago; it was made, I think, in the year 1725, it did appear then, and appears upon the minutes, I believe, on the books, which are now upon your lordships' table, that the reason of taking it up was, that the pensioners at that time took their provisions and sold them in the neighbouring villages about Greenwich, and that they got for it much less than when that regulation afterwards took place, to sell it to the butler; if they can make money of provisions, they will, with that money, undoubtedly buy drink, if they are inclined to do so; the only question is, whether they may not be

enabled to buy more, because they have a greater allowance for it from the Hospital.

I think the allowance now is three oxen a week on beef days?—I don't know any thing of the detail of that.

The Earl of Sandwich. Do you know who was the contriver of this chalk-off list?—Of the money lists, in general, Mr. Bell; the chalk-off, I imagine, is one of them; there is a minute that lies now upon your lordships' table of the general court, where Mr. Bell, when he applied for superannuation, hath enumerated all the services that he had done to Greenwich Hospital; there was a printed memorial handed about it, but the substance of it is entered in these minutes; among other things that he took credit and merit for, was his having introduced this regulation of the pensioners being permitted to take money in lieu of provisions, and he had a reward of 500*l.* given him by the general court for his services, that among the rest.

(Reads.) "At a general court held at the Admiralty, November 17; 1761, present lord Anson, Dr. Hay, &c. &c.

"Resolved, That Mr. Bell, the steward, who through his long service, great age, and other infirmities, is become incapable of performing the duty of his office, be superannuated at 100*l.* per annum during his natural life, &c. and in consideration of the great and beneficial services following by him done and performed to the Hospital during his stewardship, the Court are pleased to order and direct, that a gratuity of 500*l.* be given him as a reward for the same;" among the rest were the introduction of the three money lists.

At what time was the institution of these charity boys?—I believe about the year 1725.

I want to know how long after the institution of these boys it was, that Mr. Bell had planned this scheme that you have now read for the better maintenance of these boys?—I believe it was about the very time that the first establishment of the charity boys took place, that this regulation took place.

That you say was in the year 1725.—Yes.

Does it appear by the minutes that you have before you there, that Mr. Bell had then the stewardship of the Hospital?—He was appointed steward in 1719, and continued in it till 1761.

If these three money lists were abolished, must not the boys be turned out of the Hospital, or must it not be paid out of the revenue of the Hospital?—In the year 1778, by an account I have in my hand, the produce that is from the savings arising from these regulations, was 1,652*l.* 14*s.* 3*d.*

When was that court of directors held, when they recommended the consideration of this list to the council of the House?—I think the 3d of August, 1776.

The minute is, "The board of directors observing the irregularity;" was that an irregularity that happened just at that time?—I have already said I was absent, and ill in the court—

try at the time this happened; my clerk is here, if the House will permit him to give any further information; this is as it stands on the minutes, and I don't know the reasons why they did not go farther into the enquiry. I have asked my clerk about it, and he says they thought it would be taking too much off from this charity fund.

I think you are a director?—No, I am secretary to the board of directors.

Are you one of the council?—Yes.

Don't you think it part of your duty to be attentive to the economy of the Hospital?—Undoubtedly.

Then don't you think that a saving made, the consequence of which is drunkenness and immorality, is a species of such economy which you think not undeserving the attention of the board of directors?—I must first be certain that it is the fact, and that it is the occasion of that drunkenness and disorder that is stated; I am by no means certain that it is.

Were you present at that council that unanimously represented that it was?—I have already said I was absent at that time, and in the country.

Whether you imagine that the unanimous opinion of the council is likely to be well or ill-founded, are they proper judges of it?—Indeed, I should think they are proper judges; it is not impossible if I had been there, that I might have concurred in the opinion.

What are the different funds that produces the charity stock?—The profits arising on the provisions bought of the pensioners, that is the principal one.

What do you call the provisions bought of the pensioners?—The men that take money in lieu of their provisions.

Is that the money list?—No, the money list is a very inconsiderable part, but this is out of my department very much, and there are people in the House that can give your lordships better information.

Who are those persons?—The steward, I should think, and the butler, I am very sure will be able to give the House better information.

If these money lists were annihilated, whether the maintenance of the boys must not come upon the revenue of the Hospital?—Undoubtedly, or their number must be diminished; the income is more than the expence of them a little, but if you take away 1,600*l.* out of 2,200*l.* or 2,300*l.* which is the whole amount of that revenue, your lordships must easily conceive that must decrease the number of them, or supplies must be raised some other way.

Are not the savings of these several lists as much the revenue of the Hospital as any other part of it?—They certainly may be applied to it.

Are they not part of the revenue of the Hospital, that is my question?—Not a part of the revenue of the Hospital that has ever been applied to any other business but this of the boys.

Out of whose pocket comes this money that is so saved?—Part of the money comes from shewing the painted hall and chapel; that might be applied certainly to the maintenance of pensioners as well as the boys?

That is a part of the revenue of the Hospital?—Certainly.

Out of what revenue comes the money that is saved upon the several lists?—Supposing every man was to take up his provisions, that saving, which is now a profit to the Hospital, would be in the butcher's pocket, by supplying more meat.

It might be in the butcher's pocket, but would it not be in the pensioners' bellies? Is not the fund itself the revenue of the Hospital, out of which all these savings come?—I don't understand that.

Is it not the fund out of which the savings issue, as well as every thing else? Is not that a part of the revenue of the Hospital?—This is a saving that arises from the allowing the pensioners a fifth part less than what is the real value of their provisions.

I will put it another way; suppose 7*s.* a week was the allowance of the pensioner, would that 7*s.* be a part of the revenue or not?—Undoubtedly.

Then suppose by a subsequent order, 7*s.* out of this seven should be converted to the maintenance of the charity boys, that is a part of the revenue?—Undoubtedly.

Then the question I asked is, Are not the savings a part of the revenue?—They are part of the revenue now of Greenwich Hospital, applied in this particular way.

I wanted then to understand that, as the noble lord asked if there had been no savings; then the boys must be maintained out of the revenue of the Hospital?—If this custom was abolished.

Then you answered they must be maintained out of the revenues of the Hospital?—If this custom was abolished, this saving of 1,600*l.* a year, would be lost to Greenwich Hospital, then if that was lost, it must be supplied out of other revenues of Greenwich Hospital.

But still they are both the revenues of Greenwich Hospital?—I apprehend this sum would not be a part of the revenue in any way, if you abolish the practice, the revenue would not arise.

Is it any thing more than this, that out of the allowance of the pensioners, you take so much money and give it to the charity boys?—But it is not taking it from the revenue of the Hospital, and giving it to the charity boys.

Why, the whole is the revenues of the Hospital; are not the charity boys part of the original institution?—No, the charity boys are an excrescence.

Then I believe you have not read the act of the 17th of king William, because I find in that act, they are part of the original institution?—I can shew the minutes of the first establishment of these boys; the directors found that there were some little profits arising from

shewing the painted-hall, the mulcts of pensioners, and their cheques; that it amounted to something, and they asked the general court if they might not apply it to the maintenance of the sons of the pensioners.

Was that the first commencement of it?—It was.

I am very sorry for it, for it was the original institution by that act of parliament; the boys have the same right upon the act to a maintenance as the pensioners have; when were the boys established?—I think about the year 1725, I am not quite certain; it was a great while after the institution.

May not these pensioners that are put upon the chalk-off list at their option, be put off of it whenever they please?—I understand that it is by no means compulsory.

Do you know whether they may be put off upon their application?—I understand so.

Suppose they all received their provisions in meat, is there room for them to dine?—No, I understand that the two dining halls will not accommodate more than 1,200.

Then to go a little further, how long ago is it since more than 600 could dine?—Within 6 or 7 years; since lord Sandwich has been at the Admiralty, a new dining-hall has been fitted up, which has accommodated 600 more.

Was it not the custom that 600 people dined in the hall, and that they were obliged to be hurried away from their dinner, and then 600 people came to their diet in the same hall to dine upon their table?—I understand that to have been the practice.

Then by whose interposition was it, that an additional hall was formed, that enabled 1,200 people to dine at the same time at different tables?—I was absent when that came under consideration, but I understood it was from a survey lord Sandwich made of Greenwich Hospital; his lordship found this place as suitable as the other, for it is just a similar building to it, and it was ordered to be fitted up, and it is now as complete as the other, and holds as many people.

If the pensioners did not some of them receive money instead of provisions, must they not return to that custom of dining, either in the open air, or of coming and dining at the tables where those other people had dined?—Undoubtedly, because there are only 1,200 out of 2,100 that can be accommodated.

Acquaint the Committee if you know what the different funds are, from whence the charity stock arises?—The profits arising from the sale of those provisions.

I want to know what you mean by the sale of provisions, is that the money list, or is any other list included?—It means the butler's list and chalk-off list; I apprehend it is confined to those two; the money list, I apprehend, as near as I can calculate it; they have the full value of the provisions, consequently there is no saving to the Hospital, but that is a very small part; the butler's list is the principal thing, every man who chooses it goes to

the butler, and may take money in lieu of provisions.

We have had that explained; I desire to know, when you say the first article, from whence the charity stock arises, is the provisions bought, what are the articles you include in that, do you mean the butler's list and chalk-off list, or only one of them?—Both of them.

Do you know the proportions that those two articles produce?—I do not.

Do you know the sum total that both produce?—In this paper, which is of what it produced in 1778, it is 1,652*l.* 14*s.* another fund is the money collected for shewing the Painted Hall, and the chapel; when there was a chapel, that produced clear to the charity, (for the porter, has a fourth part of it) the other three-fourths, in the year 1778, produced 753*l.* 8*s.* 4*d.* then there is 8,000*l.* in Old and New South Sea annuities, which bears an interest of three per cent. and 8,500*l.* South Sea stock.

How did that stock arise?—From savings; the funds for the boys were more than sufficient for their maintenance, and the surplus has been invested, from time to time, in the funds, on their account.

Then I understand from you that there are several sums of money in the stocks, amounting to about 12,000*l.*?—Sixteen thousand five hundred pounds.

Which are savings that have been made out of the funds which were applicable to that charity for the maintenance of the boys, is that so?—Yes, it is.

How is the interest of that applied again?—To the maintenance of the charity boys; it forms a part of their fund.

Do you not look upon that stock to belong to Greenwich Hospital?—It is a separate fund that is kept for the boys.

Don't you imagine that the general court might apply that fund for any other purpose of the charity, if they thought proper?—Undoubtedly.

Then what other funds are there that produce the revenues of this charity?—Another fund, which, in the year 1778, produced 168*l.* 2*s.* 4*d.* was, the absences, cheques, and mulcts.

What did those cheques and mulcts arise from?—When a pensioner is absent without leave, he is chequed of his provisions, and I apprehend that he is charged to the Hospital as victualled, but that the amount of his provisions goes to the charity stock.

What are the mulcts?—Mulcts are put upon the men for various misdemeanors, small mulcts.

Are there any other articles?—Here is in this account, the produce of some old shoes which were sold, which applied to that stock, that amounted to 10*l.* There is money belonging to a deceased pensioner, put into the stock by order of the council; it is a rule, if a pensioner dies without a will, and there is

nobody to claim what he has left, it is put into the steward's hands to be applied to the charity's stock, subject to be restored, in case there is any claimant.

Is there any more?—No.

Now, with regard to the application of this money, how much was the total produce of the revenues of the charity stock for that year?—Two thousand five hundred and thirty-four pounds, if I have cast it right.

How was that applied, in the course of that year?—Here are the particulars of the application of it.

Is that account long?—Yes.

Is there any of that fund applied to any other purpose than the maintenance of the boys?—There are some of the officers of the Hospital, myself among the rest, that have small additions to their salaries out of that fund, in consideration of the extraordinary trouble that we have on account of that business; the steward has 20*l.* for his trouble; he has a great deal of business.

Be so good as read the list of those officers, and the salaries that they have out of it?—The persons that are employed about the charity boys and have their salaries, or additions to other salaries, paid out, are, the schoolmaster has 100*l.* a year, the surgeon an allowance of 30*l.* a year, the clerk of the cheque has 10 guineas a year, the clerk of Waterman's-hall 10 guineas a year; the clerk of Waterman's-hall used to be employed upon the business I am going to state to your lordships; there is another person now employed, a person living in London, in order to go on board ships, to see whether the boys that are bound out are really belonging to those ships, and to keep up a correspondence with the clerk of the cheque, relative to that business. The dispenser has 30*l.* his journeyman has 10*l.*, the steward's first clerk 10*l.*, the clerk of the cheque's first clerk has 10*l.*, the guardian's salary 10*l.*, and three assistants 5*l.* each, five nurses 15*l.* each, two helpers 5*l.* each, a person for teaching psalmody to the boys 5*l.*, that particular employment is now abolished; the chapel clerk 3*l.*, and the sexton 2*l.* Since this establishment, the steward has had 20*l.*, myself 20*l.* I think the two chaplains have had their salaries increased 30*l.* each, which is paid out of that stock, and that is the whole that I recollect.

Whether these additional salaries, that you have mentioned, are to be paid out of the charity stock at all events, or only in case there is a surplus?—Upon my word I don't know how they would be paid, if there was not a surplus.

There is nothing of that sort in the warrant or directions?—It is ordered to be paid out of the charity stock; I should hope and imagine they would think it very reasonable to pay it out of some other fund, if there is not sufficient in that.

Who are the persons that inflict the mulcts upon the men?—The council in general.

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And how many of these gentlemen have seats at the council?—I believe only four, that have any allowance out of the charity stock; the two chaplains, the steward, and myself.

Have there been any savings of this charity stock lately, that have been vested in the stocks to increase that fund?—Not very lately, on account of Mr. Ellis's deficiency; it is as much as they have been able to do to keep above water, if I may so say; his deficiency was near a thousand pounds upon this stock, and they have built a school-house since that, which might cost 5 or 600*l.* or more, so that has taken away a good part of what would otherwise have been a saving, and would otherwise have been invested in the funds.

What is the particular use these gentlemen are to the boys, who you mentioned, I think, had some extraordinary trouble? Is that extraordinary trouble greater than before the allowance was made?—I don't know that it is greater.

What is the extraordinary trouble that the chaplains are at, more than they used to be?—I cannot speak to that.

Does the chaplain catechise the boys?—Yes, he does.

How often?—I don't know how often, by their instructions, they are to do it.

I don't ask what he is bound to do, but what you know he does?—I don't know that he does it.

Captain *Baillie* again.

I would ask you relative to the charity stock; do you know what funds it arises from?—From the funds Mr. Ibbetson has described, but in some points I think rather a little different; it arises from the butler's list, the chalk-off list, and the mulcts and the cheques of pensioners; not only from the pensioners that are absent without leave, the pensioners never have any leave of absence without being chequed, unless it is for one single day; if a pensioner goes down to Chatham, to receive the remains of any little pension that may be due to him from the chest of Chatham, if it is only for four days, though he is obliged to borrow the money perhaps to carry him down to Chatham, in the mean time he is chequed for the benefit of the charity stock; it appears to me, on that account, to be very hostile to the pensioners.

What are these charity boys? Are they the children of disabled seamen, or the children of seamen maimed, drowned, or killed in the service?—I believe they don't in any way confine it to that; for I have known a clerk of a yacht have four children in Greenwich Hospital; it is not confined to the sons of seamen killed, drowned, disabled, or dead in the service.

Who appoint these boys?—The directors.

Mr. *Saward* called in.

Are you the butler?—Yes.

N

Give an account of the produce of the butler's list?—The produce of the butler's list, together with the chalk-off list, amounts to about 120*l.* a month.

I beg to have them separated?—The chalk-off list amounts to about 350*l.* or 370*l.* a year.

What does the butler's list produce per annum?—About 800*l.*

So that the whole produces about 1,200*l.* a year?—Better than that, because there is cheese; the men are paid for cheese, as well as their meat, every seven days.

What does the money list produce?—I cannot say, that is not in my department.

You said something about the cheese?—They are paid, every seven days, money in lieu of their cheese; there are about 1,200 men victualled at the tables; 800 have meat, and 400 have money alternately, and are paid every seven days for their cheese.

Does the butler's list include every article?—It does, except beer; the chalk-off is about 370, the cheese, about 500, and the butler's list perhaps may be about 600.

Is the cheese then part of the chalk-off list?—Yes; the people who have money in lieu of provisions, are not compelled to take money in lieu of their provisions; I spoke to them to-day upon that account, in case they should have any thing to say.

Do I understand you right, that the cheese alone, without the meat, produces 500*l.* a year?—I believe it does.

And the meat 360*l.*?—Yes, it is in the whole about 1,600*l.* I only mention this from remembrance; I have not the list.

Did not you say you told them to-day about this?—When I paid them their money for their meat, I asked them whether they chose to have their meat or their money, because I told them I believed I should be called before this honourable House to-day, to give an account of their chalk-off, and I wished to know whether they chose to have their meat or their money; they begged of me that I would present it, at their request, that they might have meat two days, and be paid for it the third.

Did it stand otherways before than only by choice?—No, always by choice.

[Mr. Seward withdrew.]

Captain Baillie called in again.

What do you know of any additional salary being given to an organist?—I only know that the organist has had an additional appointment within this short time.

Is it a new office?—Entirely a new office.

What does he do for it?—He teaches the charity boys to sing hymns by note.

Does that office seem to be necessary?—I think it quite foreign from the education of a boy intended for the sea service; the elder pensioners are many of them fond of singing psalms; by this new regulation, the men are

deprived of that part of their devotions in a great measure.

Do you know what salary this organist has?—I believe 30*l.* a year, over and above what he had before.

What had he before?—I believe 40*l.* as organist.

Did he attend before, and play the organ?—Yes.

And he has 20*l.* additional salary for teaching the boys?—Yes.

They are not taught the usual way of singing the old psalmody?—They sing by note, not the psalms, but hymns.

Where does the organist reside?—In the town of Greenwich; he is not lodged in the Hospital.

You mention this as a new institution; how long is it since the organist has been appointed?—I mean the institution of a new organist to teach the boys; that was what I alluded to.

You did not mean then that the organist is a new institution?—No, I did not.

Give an account to the Committee of what abuses you know of having existed relative to clothing, such as shoes, stockings, linen, beds, and washing?—The washing, for a great many years last past, I don't say within this year or two particularly, but for several years, has been notoriously bad; insomuch, that one never sees a pensioner with a clean shirt on.

But what complaints have you had?—I have had a great many complaints of it; I beg leave to refer to the minutes of the council.

Mr. Ball reads the Minutes.

“At a council held in the Royal Hospital for seamen at Greenwich, January 16, 1778.

“The nurses, Bolton, Hendy, and Rose, having complained to the council, that the linen belonging to the men under their care, was very badly washed, and not fit to be delivered to the pensioners; and the following pensioners, viz. William Sedden, John Ford, Aaron Johnson, Andrew Wilson, Thomas Rapely, Dennis Donovan, Christopher Clements, Allen M'Donald, and several others, declared, they were obliged to wash their own linen after it came from the laundry; and having produced their shirts, stocks, towels, &c. and the same having been inspected by the council, appeared badly washed, dirty and of a disagreeable smell; and the nurses being examined to know whether they had complained to the matron, answered, they had, but that the linen was always returned in the same manner; and they had likewise complained to the contractor, threatening to appeal to the officers and council of the House, and that he replied, that the council had nothing to do with it, and that it was only the matron's business to inspect into it; and it appearing to the council that the complaint is just and well-founded, and the washing the pensioners' linen equally bad throughout the

Hospital, the matrons are therefore hereby directed not to give certificates for any linen that is not really clean and well washed.—By order of the council,
DANIEL BALL."

Captain Baillie again.

Was any thing of this represented to the board of directors?—I don't know that that minute was; I have been quite tired out in representing matters which have not been redressed; it has been a general received opinion in the Hospital, it has been inculcated into almost every officer of the house, that the council of the house for naval officers had nothing to do but to discipline the pensioners, to punish them when they are refractory, but not to be their guardians or protectors in any other way; that respecting their provisions, washing, and bedding, it is the department of the steward and the clerk of the cheque.

Have you other instances to produce of complaints having been made of the badness of the washing?—There is scarce a pensioner of Greenwich Hospital but can speak to that article; I will refer to one John Glass, if your lordships please to call him in; he has made many complaints; it was the same in my predecessor's time; complaints were made to the council then, but I believe it was not entered upon their books; it was said the council had nothing to do with these matters; captain Allwright can tell your lordships about the linen, if you please.

You may go through any other article.—To my certain knowledge, the men's shoes and stockings don't last them half the time; I have had many hundred complaints concerning the shoes and stockings from different pensioners.

Have you made complaints of that to the directors?—No; I think it is the duty of the officers to apply to the Admiralty; the council and board of directors are to be a check upon each other, as I humbly conceive.

Have you complained to the Admiralty?—I cannot say I have in my own person particularly. I have mentioned it at the council, but they have had a majority there not to lay it before the Admiralty.

Is there any minute of the council respecting the shoes and stockings?—I believe we can refer to the minutes of the council respecting that matter; as to the shoes served to the pensioners, it cannot be expected that they should last the time; they have only three pair allowed for two years; and whilst the price of leather has been increasing, the contract price of shoes has been reduced. In the last contract before this, I believe they were only three shillings and seven-pence halfpenny a pair; and to my certain knowledge, at the work-house in the town of Greenwich, they allow four shillings and six-pence.

Mr. Ball reads a Minute of the Council of the 18th of July, 1777.

"Present, lieutenant-governor Baillie, cap-

tain Allwright, captain Chads, lieutenant Answell, captain Lynn, lieutenant Moyle. Thomas Frencham having complained to the council of his stockings, that one pair of the two served him at the last serving, that is in May last, were worn out in a fortnight, which ought to have lasted eight months, and that the other pair were much worn in the same time, which he produced before the council; and John Robinson, and several others, having also complained that their stockings which they now have, are much inferior to what they used to have; and it appearing to the council, that these complaints are justly founded, ordered, that a copy of this minute be sent to the steward, desiring he would lay the same before the board of directors for their information, that the necessary measures may be taken for redressing the men. By order of the council,
DANIEL BALL."

Mr. Godby, (the Steward) sworn.

Did you receive a copy of the minutes of the council the 18th of July, 1777, to lay before the court of directors?—I did.

Did you lay them before the board of directors?—I did not.

What was the reason?—Upon my clerk's informing me that there was an order of council for me to do that, I told him I had done it already, and that Mr. Baillie, who was at the head of the council, was at the board when I represented the matter of the subject of the stockings to the board.

Do you imagine that a representation from you, as an individual, would have the same weight with the board as the unanimous representation of the council?—I think it ought to have more weight, as it was my particular duty to attend to it.

Do you think yourself authorized, when you receive directions from the council to lay their complaint before the board of directors, to refuse to do it?—As the matter had been already represented and remedied as much as the board could possibly do at that time.

Had you ever laid those very complaints that are represented in that order of council, before the board?—That very complaint, the complaint of the same stockings delivered some time in the latter end of May, there were about 500 pair of stockings delivered in for the use of the pensioners; it being a large quantity, I had no place in my store-rooms to lodge them, they were lodged in the Painted-hall, all the day before they were delivered out to the pensioners; when the officer came down to assist in delivering out these stockings, I attended in person to examine these stockings; upon looking over some in the front they appeared tolerably good and near the pattern, and I began to serve them; the clerk of the cheque and his clerk, or both, were with me; after about 200 pair were served out, I discovered that they were not equal to the pattern. I got upon the bench, and took some down; I examined them my-

self, and immediately ordered the Hall doors to be shut, and stopped some that had got stockings; and in that very day it was cried, for the men to return the stockings that had got them; a few days after there was a board of directors; I represented the matter to them, and received their orders how to proceed.

What were these orders? What was done in pursuance of this?—I believe the minutes of board will shew that.

Mr. Ibbetson reads.

“On the 21st of May, 1777, the steward having represented by his letter of this date, that the contractor for hose lately delivered 500 dozen, great part of which appeared much coarser than the pattern, had saved some which were produced, &c.

“The contractor was called in and questioned, how he came to serve them; he said the stockings were much thicker, stronger, and of more value than the pattern, though not so fine.

“Ordered, That the steward cause as many to be selected of the best, as there were some good, as will be sufficient to supply the men with two pair each; the rest to be returned to the contractor.”

Q. to Captain Baillie. You have heard what Mr. Godby has said about this, that the same complaint you made, and which was stated in that order of the council, had been made by him, to that board of directors, when you were present, and that he told you that was the reason he would not prefer the complaint again?—*A.* That was in May, the other was on the 18th of July 1777; the pensioners, first, I understand, would not receive them in the Painted-hall.

Were they the same stockings that were delivered in May?—These are the stockings that the men complained of that were delivered in May.

Q. to Mr. Ibbetson. The complaint it appears, by that minute, is the 31st of May; does it not appear by the minutes, that the stockings which were found to be not equal to the pattern, were notwithstanding that delivered, that there was such a direction given, that such as were good and sufficient should be delivered.—“Ordered, That the steward do cause as many of the best of them to be selected as will be sufficient to provide each man with two pair, the rest to be returned to the contractor.”

Then, do you imagine that, according to that order, that any thing but the best, and such as were sufficient and good for the men, ought to be delivered?—Undoubtedly not.

Now will Mr. Godby be so good as read that part of the complaint made afterwards in July?

Mr. Ibbetson. I beg to be understood in that last part of it; the order directs, that the best of them that could be selected.

Do you understand that the best of them

were to be delivered whether good or bad?—I do certainly understand this minute, that the best that could be selected, to the amount of two pair to each man.

Do you imagine that the court of directors, in giving that order, meant that any thing should be given that were not serviceable for the men? Read the order and see who were present?—Sir Charles Hardy, captain Baillie, captain Hood, Mr. Stuart, sir Percy Brett, Mr. ———, sir Peter Denny, Mr. Hicks, and the rev. Mr. Cooke. [*Reads the Order.*]

Then I ask you, should you have thought yourself warranted under that order, in which order is stated, that those which were different from the pattern were stronger and better, to have delivered any to the men that were not fit for their use?—I should have looked upon myself as authorised by that order to have selected the best of them, let their quality have been what it would, and to have issued of those best, two pair a man.

And should you have thought yourself authorised so to have done, without representing to the directors that they were bad?—If I had found any extremely bad, I certainly should have represented that to the board of directors.

Q. to Captain Baillie. I wanted to know whether you objected to the order of the board respecting the selecting two pair per man out of that bad quantity.—*A.* I did; I said that the people could not be so much distressed for stockings, because they had not returned their old stockings. I made use of this particular argument I am going to use now; I said, that the men could not be distressed for a week or a fortnight, because they had their old stockings, which were made of double yarn, and were stronger than the new.

Q. to Mr. Ball. Read the order of council, the 18th of July, 1777.—*Mr. Ball reads the order.*

Q. to Mr. Godby. Do you understand that your having complained to the board of directors, that the stockings were originally bad, and they had in consequence of that, upon an enquiry, been told, that they were, though a different quality, stronger, and in many respects better than the pattern; they having directed you to deliver out two pair of the best, do you think that a complaint, stating, that these stockings, which had been delivered in May, were excessive bad, and that they had not lasted a fortnight, do you think that was the same sort of complaint you had made in May?—*A.* I do.

Why so?—When I represented this matter to the board, the hosier was called in; he might represent that there were some of them equal to the pattern, but I never conceived any of them were equal to the pattern. I think, to the best of my knowledge, the board gave him four months to provide others; he required that time or near it to provide others; it was impossible therefore to remedy it before that time, and we were obliged to take

them as we could, deducting a shilling a dozen for those we received; I received an order of the board to receive that, which amounted to 16*l*.

But did you not think it your duty when an application was made to you from the council to represent a particular fact to the board of directors, don't you think it was your duty so to have done?—I think it impossible to be remedied; I represented that Mr. Baillie was present; Mr. Baillie being present at the board of directors, and at the council, I thought, upon my clerk's informing him at the council, that that was sufficient; Mr. Baillie must know as well as I that no remedy could be applied.

I did not ask you what you thought about Mr. Baillie and your clerk, but whether you think it is your duty, if you receive an order from the council to lay a complaint before the board of directors, to lay that complaint before the board or not?—It had been done in that very instance.

Did you lay a copy of that complaint before the board?—No.

Do you apprehend it was your duty to have done it?—I apprehend it was not necessary.

I ask you whether it is a part of your duty to obey those orders?—I understood that I had done my duty sufficiently in every respect.

I ask you a general question, whether it is your duty to obey the positive orders of the council or not?—Certainly, and I thought I had done my duty.

The council directed you to lay a copy of their minute before the directors, and you did not do that. Do you think you did your duty in that?—When I informed them that I had done so before.

Did you inform the council so?—The clerk of the council told me so, and I gave him that answer, that it was already done.

I wish the minute of the council to be read; I think it is said he was ordered to lay this before the board of directors.—Mr. Ball reads it: "Ordered, that a copy of this minute be sent to the steward, desiring he would lay the same before the board of directors for their information, that the necessary measures may be taken for redressing the men."

Lord Chancellor to Mr. Godby. Does the constitution of the house make you the servant in any respect, and what?—In none; I am one of the council.

Then this, that they are calling an order, was a desire of your brother counsellors, that you would make that representation?—Yes.

Of which council you were one?—Yes.

Who is the proper person to lay it before the board of directors?—I was, certainly.

Why are you the proper person to lay a complaint of this kind before the board of directors?—Because I received these stockings by pattern, and issued them with the assistance of my clerk.

Is it your business to receive, examine, and

issue them?—Yes, with the assistance of the clerk of the cheque.

I should be glad to know, whether the board of directors (at the time they made that order to deliver two pairs to the several pensioners of the best) knew at that time that the stockings so to be delivered would not last above a fortnight?—You understand, my lord, that I had laid a sample, taken promiscuously out of the whole, for their inspection, supposing them to be as good a judge as myself.

I ask, whether the court of directors could know or understand that the stockings so to be delivered would not last above a fortnight?—It was impossible for them or me to say how long they would last; they were not equal to the pattern.

If upon a trial they wore out in a fortnight, and a new complaint was made, was not that complaint fit to be carried to the board of directors?—We had no remedy.

I ask, if upon the trial they wore out in a fortnight, and a new complaint was made, was not that complaint fit to be carried to the board of directors?—I had received my orders, and acted under those orders.

But was this a fact fit to be carried to them or not?—If the council had thought proper.

They did think proper, and desired you to do it.—I represented in return, that I had done it; I received no farther orders from the council.

You had never laid before the board of directors that the stockings upon trial had not lasted a fortnight?—No, I had not.

Why did you not lay that complaint before the board of directors?—It did not lie with me to do it.

I misunderstood you then; I thought you were the proper person to carry the representations of the council to the board of directors?—I am; but I thought I had done sufficient.

Do you think that a representation to the board of directors, at that time, could have answered any purpose?—I don't.

Do you think it is fit for you to have made a representation which could answer no purpose?—I don't.

Whether if this complaint had been made to the board of directors, that the stockings were so bad they would not last a man a fortnight, whether it would have been a good ground for them to have turned off the contractor, and employed somebody else?—It very possibly might, but I don't know they were so bad as that.

Then if it is possible they might, or if they had done it, would not that have been something like a remedy against the complaint?—Not an immediate remedy; there could be no immediate remedy according to the representation of the hosiers.

Could it not be remedied another time?—It is remedied now; they have now a new contractor.

Did not the board of directors know, upon

examining some of these stockings, that many of them were much worse than they ought to have been?—Yes.

Would not that have been a sufficient excuse for turning off a contractor?—Certainly.

From what appeared to you upon inspecting these stockings, whether they looked as if they would not last a fortnight, and whether it appeared to you that they did not last a fortnight?—It never appeared so to me; it will often happen upon a contract that some will be bad.

Was it a general complaint in the Hospital, that they would not last more than a fortnight; or was it only a few people that made that complaint?—I believe it was very far from a general complaint; I believe they did not last the time they should do.

Do you know any men that were satisfied with their stockings?—I believe some were very well satisfied; and whenever they came to my office, I changed them frequently for what they call dead men's stockings, that the men might not suffer so much, which we are authorised to do from our instructions.

I think you stated, that it would be improper in you to make a complaint to the directors that it was not in their power to remedy?—I may have said to that purpose.

Do you think that you are to be the judge, or they, whether it is possible to remedy it or not?—I understand that I had made the complaint to the board; had received their orders, and I thought that sufficient; and then I was justifiable in acting under those orders.

But a fresh complaint had arisen?—I did not see any occasion for a fresh complaint; the council met, and therefore it was their duty to see to it.

I ask you, whether it was your duty to lay that complaint, when it was made by the council, before the board of directors?—If in my judgment I had seen reason for a fresh complaint.

I ask you, whether you think you are to be the judge, whether a complaint made by the council was proper to be laid before the board of directors?—I had nothing to do with it; I receive the orders from the board of directors to act in my department.

But did you not receive communication of this?—I did.

Why did you not lay that complaint before the board?—For the reason I gave before; I thought the answer that I had given to the council sufficient.

Then you were to judge, whether that complaint was well or ill-founded, and not the board of directors?—That is a different thing; I do not say that I do.

At the time when you did not lay this before the board, were not you satisfied, that if the council had consisted of reasonable people, that it was a sufficient answer to say, that that complaint already the directors were acquainted with?—Yes.

And was not that the reason for not doing it?—Yes; and the reason I gave.

Had you before acquainted the board of directors, that since the delivery they had worn out in a fortnight?—I had complained they were bad, and not equal to the pattern.

But that was before the trial?—Yes.

And are these two things the same?—As the stockings were bad, it is reasonable to suppose they would wear out before the time limited for them; I don't look upon it that the whole, or near of them, would wear out in that time.

I ask you, if it were but for one that was worn out, whether that is the same complaint? No, it is not.

You say, that the contractor had not time to find the quantity of stockings necessary for four months, I think?—I do.

At the end of those four months, did he bring stockings equal to the original contract?—I think they were very near.

As good as you could expect?—Yes; and much better than the former.

And his reason for not giving them good before, was, another man undertaking it, and he was forced to bring goods that otherwise he would not have done?—Yes, that was the reason he gave.

As you complained in the first instance to the council that they were bad, why did not you in the second instance make the complaint?—I thought that complaint had been made to the board, and I thought that would be a sufficient answer to the council.

Though the stockings proved bad afterwards?—Yes.

I think you just now said, that there was no remedy at that time; you acknowledge the stockings were very bad, but you had no remedy; now I think it appears to me there was a remedy.—It does not appear to me.

You gave these people two pairs of stockings each, did not you?—Yes.

Suppose, when you had found them so very bad, you had delivered out but one pair to each; why did not you remedy it in that manner?—I did not think two pair were sufficient to deliver them out for a change.

But they had stockings, Mr. Baillie says, of their own before; that was a change.—They had old stockings certainly.

Suppose, if a pair had been worn out, you might have got another pair for each of them in a fortnight?—The contractor demanded four months.

Could you not have got others in a fortnight?—I believe not.

You say you could not have got these stockings from these people in a fortnight; I will answer for it, if you had applied to the hosiers at Leicester, you would have got them in a week.—I don't think they could be dyed in the time, much more made.

Do you think the contractor could not have got them there?—I don't think he could have them dyed in the time; when I have applied to the contractors for stockings, they have made me answer, that they were dying, and would be ready in a week or a month, or so.

But if you had applied properly where I tell you, do you think they could not be supplied with a sufficient number in a fortnight?—I don't know.

Because you said you did not see any remedy.—I did not see any remedy; nor did the board at that time, I believe; I don't think it was possible to be served in the time.

Lord Chancellor. Whether you look upon yourself to be under the orders of the council?—A. No.

And whether it is usual for you to carry the minutes of the council to the board of directors?—Certainly not.

Did you deliver the two pair of stockings, by the order of the directors?—I did.

Was the same contractor continued after this abuse?—No, we have a new contractor now.

But who was the contractor then?—The man that serves us now followed the man that served in these bad stockings; he did not supply us afterwards; I believe he did not bid for the contract afterwards, I am not certain whether he did or not; but, however, there was a lower bidder, and the person has it now.

You did not exempt him from the contract?—No.

And did he continue contractor the four months between, or how long?—He continued for the serving of these stockings for the two years.

Then he served four months afterwards?—Yes, several months afterwards.

Without applying to any body but the contractor, after the men had had one pair of stockings, which they might have made a shift with perhaps, would it not have been better, and would there not have been time enough without taking two pair, to have waited for the contractor's providing?—I don't think there would.

How long were these stockings to last?—Eight months, I think.

Then how long time would you give him for another pair?—I think it was four months the contractor wished to have, and said he could not complete the contract in less time.

Don't you know three pair of stockings ought to last two years?—Yes, a pair lasts eight months.

Then, according to that, might they not have had time enough to have waited for the second pair being made?—I don't think there would.

Do you imagine that the board of directors thought that the stockings, that were delivered in the month of May, were fit for the men to wear, and fit to last eight months or not?—That they were not is certain; if they had, there was no occasion for me to have made a complaint.

That I don't see; for you represented that they were not equal to the pattern, and the contractor's representation was, that they were stronger than the pattern; what was

done in consequence of this? Were any more stockings allowed to the men, in consequence of those having been delivered which were bad?—When a man came to my office with a complaint, which I look upon the proper place to come to, I ordered my people to change any of those that were bad, and give them some old ones that were returned in from dead men; we have an order, when a man dies, his clothes are returned into my office, and they are mended and provided for new pensioners.

And that was the case with all that complained?—I believe most; when I thought it a just complaint, and that the man had not wore out his stockings by working as a labourer, or any thing of that kind.

Was it done in the case of those men that complained to the council?—I don't know who those men were, and should not remember if I saw the list of them.

What is the method that the council usually follow, when they want to communicate any thing to the board of directors?—They order the clerk of the council, I should apprehend, to present such a letter to the board.

Whether you have ever carried any thing before the board of directors by the desire of the council?—I don't recollect that I ever have; I may, but I don't recollect that I ever did.

I think you said, you told the clerk that you had already made the complaint; where did you tell him that?—I told my clerk, who told me the message.

Do you know that your clerk declared that to the council?—I don't know that he did, but I believe he did. [Mr. Godby withdrew.]

Mr. Ibbetson called in again.

Do you look upon it to be the duty of the steward to make representation by the direction of the council, to the board of directors?—No, I don't.

Then you don't look upon Mr. Godby to be responsible in not making the second complaint at the desire of the council, to the board of directors: whose business is it to make the complaint from the council to the board of directors? How is it usually done?—I have never known it otherwise since I have been secretary of Greenwich Hospital, that any complaint or any orders of the council have ever come to me in any other way than under a cover from the clerk of the council; I never knew an instance where the steward was desired to convey it, and I was surprised to see that tacked to this resolution; I never knew an officer a bearer of those minutes, or desired to represent them.

[Mr. Ibbetson withdrew.]

Captain Baillie called in again.

Give an account of any other abuses?—I beg to say a word or two upon the subject of these stockings. In the first place, we were very well served by the former contractor of

the Hospital for stockings; there was no complaint in his time that I know of; the men were served with stockings made of double yarn. For the sake of reducing that contract only one penny a pair, or thereabouts, the contract was given to another man, who made them of single yarn, which was of very little use to the men. When the stockings were complained of, two thirds were issued to the pensioners, only one third was returned to the contractor, and instead of prosecuting him for the penalty, they let him off; and I believe verily the same stockings were afterwards returned to the pensioners; there is a hosier here that can tell you more of that matter than myself, because he viewed a great number of those stockings, at the time the committee of enquiry were sitting, who refused to inspect into this matter; I beg leave to observe, that in regard to desiring the steward of the Hospital to present that minute of the council to the board of directors, it was said, if we make a complaint about these stockings, let it go through the proper officer, the steward of Greenwich Hospital, your complaint may be attended to; we have made many complaints to the directors, to which we have had no answer, as your lordships will see by the minutes, that they were never attended to, and therefore we applied through the proper officer, hoping it would then be attended to.

Did you ever employ the steward upon that sort of business before?—No.

I wonder you should think him a proper officer?—Because he is a servant to the directors, and because he is the person that has the inspection of all those kinds of stores, receives them, and ought to see that they are good and agreeable to the contract; he ought to tell the directors of it; it is not to be supposed this can come immediately under their knowledge without his information.

If you had sent this in the ordinary way by a letter to the secretary, they would of course have sent for this man, and had the information from him, who was the proper man to give it, as I understood at the beginning of your examination upon this subject; if I am mistaken, the clerk will set me right. I understood you said, that it was improper for the council to apply to the board of directors for any order at all, and you thought it the duty of the council always to make application to the Admiralty?—What we could not redress ourselves, I thought it our duty to represent it to the Admiralty; no complaint can arise in Greenwich Hospital, but from the misconduct of the council or directors.

I understand you were president of this very council who applied to the board of directors, whom you think the improper persons to apply to?—I have but one voice at the council, and have been frequently and constantly overruled at the council, or else the affairs of the Hospital, I humbly conceive, would not have been in the plight they are now in.

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Did you at the council propose preferring the complaint immediately to the Admiralty or to the directors?—Not in that particular instance I did not, but I have in others; our commission says, when we cannot redress ourselves, as I understand, we are to apply to the board of Admiralty.

There have been frequent instances mentioned of provisions having been represented to the governor and board of directors as bad by the mal-practices of clerks that received them, and of the contractors, without redress; are there any more instances of that sort than what we have heard of?—Upon the subject of the putrid veal, that was served in the infirmary, I believe we wrote three times to the board of directors, and to the governor, who was in London; and in order to stimulate the governor, we wrote him from the council inclosed copies of two letters from the board of Admiralty to the council, in which the duty of the council officers is particularly pointed out, and no answer could be procured.

The Minutes of the 15th of April, 1774, read:

“At a council the 15th of April, 1774. The council finding no official answer is come from the board of directors, respecting the two minutes of the 4th and 8th inst. laid before them, complaining that the clerks had not done their duty by receiving the meat complained of by the physician, surgeon, and dispenser, and also that the contractor had very much imposed upon the Hospital in sending such meat, unanimously desire, that the gentlemen of the council, who are in the direction, would inform them what was done in the affair.

“The lieutenant-governor acquainted them, that he had told the directors he hoped something would be done, as the butcher had since that, on Monday the 11th instant, sent beef, part of which was so bad, as was obliged to be returned by the officers, whose duty it was to inspect it, and that if the butcher was permitted to go on, the patience of the pensioners would be worn out; upon which the butcher was sent for, and reprimanded.

“The council are therefore unanimously of opinion, that the measures taken by the board of directors, after such incontrovertible evidence, have not been satisfactory to the council; nor effectual to prevent the like abuses for the future, &c.

“The council are likewise of opinion, that copies of the two minutes, which were laid before the board of directors, together with that of the 18th of March, be laid before the governor, that the governor may please to take such steps as may more effectually prevent such mal-practices of the clerks and contractors in future; and that copies of letters from the secretary of the Admiralty of the 19th of April and 7th of May, 1742, to sir John Jennings, be also laid before the governor; and that whenever the council have occasion to lay any matters before the board

of directors, they wish to have official answers thereto. By order of the Council.

"DANIEL BALL."

What are those letters that are referred to in that minute?—"They are three letters that we found in the books of the council, from a late secretary of the Admiralty, Mr. Corbett, reprimanding the council very severely for not looking minutely into the affairs of the Hospital; that their lordships had been informed by the directors, that the men had been defrauded of their just allowance of provisions, and that there were frauds and abuses in the Hospital to the prejudice of the poor men; that he was commanded by their lordships to desire the governor to call together the officers of the council, and to let them know that their lordships thought them very blameable for suffering such abuses to be practised, which could not have been without their extreme indolence in not looking into the affairs of the Hospital; that their own establishment in the Hospital was for the government, care, and protection of the poor men, and that it was their duty to look daily into every thing, and to remedy every disorder.

"That the allegations in the officers report, that the pensioners had made no complaint, does rather aggravate their conduct, in suffering the men's patience to be so long imposed upon.

"That the lords of the Admiralty had commanded him to express himself in such a manner as might shew their wrath and displeasure at such a proceeding.

"That their lordships did very well know that the directors had no power but in the management of the revenue and estates of the Hospital, and in carrying on the works of the building, nor did they assume any on that occasion; but their lordships should always take well of them any informations that tend to rectify any mistakes or omissions whatsoever concerning the state of the Hospital."

An entry read of an order of the council the 4th of April, 1774, respecting the badness of the veal, viz.

"Present, Lieutenant-governor Baillie, captain Maplesden, and ten other officers of the council.

"The cook of the infirmary having represented to the dispenser, that the veal provided for the sick on Sunday last, was very bad, and Mr. Pocock having inspected the same, was of that opinion, and ordered it to be carried to the physician, who, finding it unfit for the pensioners to eat, ordered it to be returned to the butcher, who refused to take it back, saying, in justification of himself, that it had been received by Mr. Court, the clerk of the cheque's clerk, and Mr. Hambly, one of the steward's clerks.

"The council were therefore unanimously of opinion, that the butcher had very much

imposed upon the Hospital, by sending such bad meat, and that the clerks did not do their duty in receiving it, and beg leave to lay this copy of the minute before the board of directors, that they may be pleased to give such directions as may be thought necessary to prevent the like impositions in future.

"By order of the Council,

"DANIEL BALL."

Was the complaint made, in consequence of this, to the board of directors, that they did not give an answer to it?—Capt. Baillie. Yes; and there was no answer to it.

In the minute of the council, of the 15th of April, 1774, to the governor, notice is taken of two complaints being presented to the board of directors, to which they received no answer: what were those complaints?—Complaining of this bad veal: after that we complained to the governor.

There must have been a minute of council, stating that complaint.—This minute of the council relates to those complaints.

How does it appear, that this minute of the council was laid before the board of directors?—Mr. Ball. It was laid before the board of directors by myself, who officiate for the clerk of the council.

Does it appear there, that it was ordered to be laid before the board of directors?—Mr. Ball reads: "Resolved, that a copy of the minutes, of the 4th and 8th of April, be laid before the board of directors, for their information in this affair; and also the minute of the 15th to be laid before the governor."

Does it appear by any minute of the board of directors, that it was laid before the directors?—At a board of directors, on the 6th of April, a minute of the council of the 4th instant was read, in relation to some bad veal, &c. &c.

Mr. Ibbetson called in again.

Is there any communication of that to the council?—As much as there ever is, in any cases of this kind; which is, that the lieutenant-governor, and several of the members of the council being generally at a board of directors: there are subsequent minutes. At the next meeting, which was on the 13th of April, a minute of council, of the 8th inst. was read, relating to some farther particulars concerning the veal complained of by them in the minute of the 4th instant.

What was done upon that?—That is all that was stated of it; the board had given directions before; this also contains some fresh informations with respect to the subject.

Captain Baillie. I beg the minute of council, of the 8th of April, may be read, in order to explain what sort of veal it was.

Mr. Ball reads the minute.

"At a Council, the 8th of April, 1774. Present, lieutenant-governor Baillie, captain Maplesden, captain Allwright, and eight others.

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“Wherein it appeared, that the contractor said, he was ordered to send in small veal for the sick, by Mr. Taylor, the surgeon; and Mr. Taylor being sent for by the council, was asked whether he gave such orders to the butcher or his servants? He answered, that he never gave such orders, directly or indirectly; and that, to the best of his knowledge, he never saw either the contractor, or any of his people. Mr. Taylor being likewise asked, whether he saw the veal complained of that day, said he did; and being asked his opinion of it, said it appeared extremely indifferent; the colour not good, very bony, the skin full of air, the flesh flabby and loose, and in no degree marketable: and Mr. Pocock, the dispenser, being asked his opinion of it, said, it appeared to him to be in a state of putrefaction, and confirmed Mr. Taylor’s opinion of the meat. Mr. Thomas, the surgeon’s assistant, being likewise asked whether he gave any orders to the butcher to bring small veal, said, he never did; and it further appeared, by the evidence of James Webb, Thomas Hardcastle, and others, that the butcher’s servant refused to take back this veal, &c.

“Resolved, that a copy of this minute be laid before the board of directors for further information in this affair. DANIEL BALL.”

Were the minutes of that council laid before the board of directors?—Certainly they were.

Let us see what was done in consequence of that?

Captain *Baillie*. That is what was read in the director’s minute of the 13th. After this the council, on the 15th, made representation to the governor, hoping we might have answers from the board of directors, when we had occasion to apply to them; but all to no manner of purpose; we never could get an answer from them in any way.

Was there any remedy given?—The butcher was sent for to the board of directors, and there told by the governor, that if he did not supply better meat, especially for the sick, he should not enjoy the contract any longer. I have already told your lordships, that the butcher said, he would have the contract, that he would supply the Hospital with meat, and that there was no complaint of him or his meat till that troublesome fellow, the lieutenant-governor, got into office.

Q. to Mr. *Ball*. You are the secretary of the council?—Yes.

It would appear in your minutes, if there had ever been transmitted answers from the board of directors to the council?—There have been minutes from the board of directors, but I don’t remember the answers.

Captain *Baillie*. I recollect one instance, when the complaints of the bad quality of the beef rose to an enormous height. The directors answered upon a remonstrance from the council, that they had acquiesced in their desire to cut off the water cocks, which commu-

nicated with the beer pipes; it was on the 10th of May, 1777.

Mr. *Ibbetson* called in.

What is the usual method for the board of directors upon receiving complaints from the council at Greenwich Hospital, whether they ever return answers, or if they do, in what manner?—The general practice when they make any complaints, the board redresses them if they can be redressed; there is generally, or almost always at all the boards, either the governor or lieutenant-governor, or persons of the House, present.

Mr. *Ibbetson* reads an entry of the 10th of May, 1777.

“Present, sir Charles Hardy (governor), captain Baillie (lieutenant-governor), captain Hood (treasurer) sir Peter Dennis, Mr. Marsh, and several others.

“The board resumed the consideration of the council minutes of the 21st and 25th of last month, and took into consideration another minute of theirs of the 8th instant, relative to the bad beer; and having discoursed with the brewer, came to the following resolution, viz.

“That all the water-cocks in the brew-house, which communicate to the beer pipes, be locked up, and the keys delivered into the custody of the steward, till they shall be wanted for the purpose of opening the said locks, in order to cleanse those pipes, at which time he, or one of his clerks, are to attend with them; and when the business is done, and the cocks locked up, to take care of the keys, until they shall be wanted again for the like purpose.

“The brewer was at the same time told, that he must attend to the brewings himself, taste the beer before it be drawn from the vats for the use of the pensioners, and if he finds it not as it ought to be, not to let it be drawn off, but to serve such as is good, and in every respect fit for the men to drink, and no other, for which purpose he is always to have a sufficient stock in store; and if he finds that his servants are negligent or incapable of their duty, to dismiss them, and to appoint such others as he may think more diligent and capable, in their stead. Adjourned.”

Did they communicate that to the council?—No, nor there was no order of the board, for it to be communicated; here is a string of resolutions, and the remedy is applied immediately.

What have you to say to this, captain Baillie?—I beg leave first to say, that I have in my hand a copy of the minute which Mr. Ibbetson has now read, given to me by Mr. Ball, in Ball’s own hand-writing, and Mr. Ball having no access to the minutes of the board of directors, he therefore could not have furnished me with a copy of that minute but through Mr. Ibbetson or his clerk. And secondly, I beg the first article of Mr. Ibbetson’s instructions may be read, by which it will ap-

per, that he is ordered to give answers in writing to all parties, making representations to the board of directors; otherwise, if the lieutenant-governor happens not to be present at the board, it is impossible the council can ever hear any thing certain concerning the complaints which they make.

Mr. Ibbetson reads the first article of his Instructions from a printed book.

"The secretary, or his deputy, is to attend at all the meetings of the general court and of the directors, and to read all papers necessary to be laid before them, and take minutes of their proceedings, copies of which he is to deliver to all persons concerned, attested under his hands."

Captain Baillie. That is what I allude to. I will ask captain Baillie, what complaints do you know have existed relative to any bad beer?—A great number of complaints.

Is there one short fact about it? Do you recollect whether at one time there was any great quantity that the council thought proper to start?—111 barrels of bad beer the council were under the necessity to start at one time, because they were mixing it with new beer in the tun, for the use of the pensioners.

At what time was that?—October 9, 1775; there have been more complaints of the beer than of any other article, and it is a material part of the provisions of the pensioners.

Does it appear that the beer was started by the minutes of the council?—I should think it certainly would.

Mr. Ball reads the Minutes of the Council, October 9, 1775.

"Present, lieutenant-governor Baillie; captain Maplesden, lieutenant Gordon, lieutenant Besson, lieutenant Le Fevre, lieutenant Ansell, captain Lynn, lieutenant Moyle, lieutenant Kerr, lieutenant Smith, Mr. Godby.

"The lieutenant-governor acquainted the council, that he had received repeated complaints from the officers and pensioners, of the bad quality of the small beer, and that he had as frequently admonished the master brewer thereof, without its being properly remedied; in consequence of which he now laid the said complaint before them, agreeable to the 17th article of the general instructions, for the regulating, and better government of the pensioners and servants of the said Hospital, wherein they are directed to apply a proper remedy, without delay, to all just causes of complaint. The council thereupon went to the brewhouse, and tasted each vat of beer separately, and found 111 barrels of the said beer, as sour as the nature of small beer would admit of; and were unanimously of opinion, that it was neither good, wholesome, or fit for the pensioners to drink; and that it would be prejudicial to the health of the men to have beer that was turned, broke into new beer in the tun, which hath been hitherto practised; therefore ordered the said beer to be started,

to prevent such practice in future. The council also, upon tasting the beer for present use, found it good tasted, but very small, and scarce fit to keep a week, from brewing to brewing. And the master brewer being called in, and asked the reasons concerning the poverty of the beer, answered, that it could not be otherwise during the three summer months, from the heat of the weather, and drawing six barrels of beer from a quarter of malt; therefore proposed drawing half a barrel less during the above months, which would make a material alteration in the quality of the beer.

"The council having maturely considered the causes that might affect the quality of the beer, and examined the malt and hops, and compared the same with other samples, found the malt good, but the hops of an inferior quality; and having likewise considered the frequent complaints made formerly in the summer months, do unanimously recommend to the board of directors, the master brewer's proposal, for making no more than five barrels and a half of small beer (instead of six) from a quarter of malt, during three months in the summer, in order to answer the comfortable and salutary end intended for the general welfare of the establishment. Adjourned."

Captain Baillie. I beg leave to observe, my lords, that this bad beer was not during the summer months, but in October, that is our October in Greenwich Hospital.

Are there any more minutes of the council respecting the bad beer?—Yes, April 21st, 25th, May 8th and 30th, 1777.

Read them.

Mr. Ball reads.

"At a Council held in the Royal Hospital for Seamen at Greenwich, April 21, 1777.

"Present, lieutenant-governor Baillie; captain Maplesden, captain Lynn, lieutenant Moyle, lieutenant Kerr, lieutenant Smith, captain Allwright, captain Chads, lieutenant Besson, lieutenant Le Fevre, lieutenant Ansell.

"The Minutes of the last Council were read and confirmed.

"The lieutenant-governor acquainted the council that captain Allwright, the captain of the week, upon duty, informed him, that Adam Meldrum, a pensioner, had, in a very quiet, decent, and orderly manner, complained to him in behalf of himself and several other pensioners, that their allowance of beer, for several days successively, had been of so bad a quality, that they could not drink it; that the beer served to them in the morning grew sour by the evening: that in consequence of such representation, the lieutenant-governor directed captain Allwright, and lieutenant Ansell, the lieutenant for the week, to taste the beer at the sinks at the usual hour of serving it, and to report to him if there was any just cause of complaint; and they having reported to him yesterday, that they had tast-

ed the beer at the sinks, which was of a very indifferent quality, and the butler confirming the same, the lieutenant-governor lays the matter before the council, agreeable to the 17th article of the orders for the better regulating the pensioners and servants of the said Hospital.

"Adam Meldrum, a pensioner, being then called in, and asked what cause he had to find fault with the beer, said, it had no taste either of malt or hops; that if he kept it three or four hours it grew sour, and gave him the gripes; and that it continued in the same state the whole week; and says, he was informed it affected several other men in the same manner. Being asked, why he did not complain sooner, says, that several people talked of complaining, but deferred it, in hopes that the beer would be better; upon which he replied, that he would complain to captain Chads, and to captain Allwright, the captain of the week.

"Joseph Simpson, another complainant, being asked if he had any cause to complain of the beer, says, it was of a sour, watry, cold quality for about eight or ten days past; and being asked, why he did not complain sooner, said, he was sorry to be the first, hoping it would be better, but that the bad quality of the beer frequently gave him the gripes; and that he was served with the beer at the north side of the hall.

"Several other pensioners gave much the same account; declaring, that all the men in their wards also complained of the bad beer. The two sink-men of the east and west dining halls, said, they imputed the bad beer to a mixture of beer and water, sent in through the pipes from the brewhouse; that they had complained to the butler three times in eight days; that they had frequently seen 20 gallons of water let in between the old vat being out and the new vat turned on; and the same was corroborated by many others that that had been practised for some years past.

"The butler being asked, if he knew the cause of the bad quality of the beer, said, he supposed it to proceed from a mixture of beer and water turned on from the brewhouse.

"Mr. Fearon, the master brewer, being called in, and the foregoing declarations of the pensioners read to him, was asked, to what cause he attributed the bad quality of the beer for eight days past, said, that the butler sent to inform him, that there was water mixed with the beer; and having enquired of Pope, the foreman, was informed by him, that there was a cock which had communication with the reservoir of water to the pipes that convey the beer from the brewhouse to the sinks, which he supposed leaked; that he sent to the clerk of the works' office, and had it repaired. And Mr. Fearon being asked, whether he found any surplus of beer from the quantity of water let in between the servings from the different vats, remarked, that one day last week he had three barrels and a half surplus.

"John Pope, the foreman, being asked if he knew the cause of the bad quality of the beer, said, there was a leak in the cock that communicates with the water from the reservoir to the main pipe, which he supposed mixed with the beer; that he applied seven or eight times to the clerk of the works' office before he could get it repaired, and that it was near six months since his first application; that when he first applied to the clerk of the works' office, he acquainted the master brewer with the defect.

"Mr. Skeen, who attends for the clerk of the works, being called in, said, that about a month ago, Mr. Fearon, the master brewer, sent a note to the office, to repair the pipes at the brewhouse that wanted mending, which was done accordingly; and that whenever any application was made from the master brewer to repair the pipes, it was done immediately.

"The council, from the foregoing declarations, are of opinion, that the frequent complaints of the badness of the beer proceeds from the ready and easy communication of the water cocks with the pipes which convey the beer from the brewhouse to the sink where the beer is served; and therefore recommend it to the board of directors, for the safety and security of the pensioners, that their beer may not be impoverished with water, to have the communication of the water cocks cut off, as the beer pipes may be cleansed without them.

"DANIEL BALL, Clerk of the Council."

Was this representation laid before the board of directors?

Capt. *Baillie*. Yes, it was; but we received no answer: the brewer was discoursed with again, upon these complaints, by the directors.

Mr. Ibbetson read a Minute of the 7th of October 1775, at a Meeting of the Directors, &c. &c.

Q. to Capt. *Baillie*. What was done in consequence of this?—I don't recollect that there was any such desire to me or the council, directly or indirectly, in any way whatever, to survey the beer in the brewhouse; nor was I to be a messenger from the board of directors to the council of the Hospital; it would well become the directors themselves to visit the brewhouse. No such minute ever appeared at the council: our complaint was on the 9th of October, 1775.

Q. to Mr. *Ibbetson*. Was capt. *Baillie* present at that meeting?—He was president.

Capt. *Baillie*. The board of directors have the expenditure of the money of the Hospital, and not the council, and therefore the directors are responsible that all sorts of stores and provisions be good.

Mr. *Ibbetson*. It is something extraordinary that this recommendation to the council, which must have been carried to the council by somebody, is dated the 7th of October, and on the 9th of October it appears that they

had been to the brewhouse, and started this great quantity of sour beer.

Then on the 9th there is an unanimous representation to the board of directors; what I wanted you to read, was, the proceedings of the board of directors, in consequence of this representation of the 9th?

Mr. Ibbetson. I don't see any thing upon that minute.

When was the next meeting of the directors after the 9th?—The 18th.

Is there no notice taken of it there?—No; but I remember very well, the board of directors, upon some occasion, I don't know whether it was this, or upon some representation of the brewer, thinking it very improper to make any alteration, or to allow any more malt or hops than had been usually allowed, for every body knew his predecessor had brewed good beer, and every body knows his successor brews very good beer.

Was any body punished in consequence of this; the officer whose business it was to inspect this? Does capt. Baillie know of any body that was punished?

Capt. Baillie. I don't know that any notice was taken of it.

Was the brewer dismissed?—No; on the contrary, there was bad beer again; particularly in the months of April and May, 1777: the men assembled in a body, and threatened to go to the lords of the Admiralty; threatened to go to St. James's; I had difficulty to keep them back.

Does Mr. Ibbetson know whether the brewer or hop-factor were dismissed in consequence of this?—Not in consequence of this; but there are many entries by which your lordships will see that the board of directors took a deal of pains upon the subject.

Read the minutes of council or the board of directors, as they come in order.

Mr. Ibbetson reads the Minutes of the Council, April 21, 1777.

Mr. Ibbetson. There came with it, at the same time, one of the 25th; they were both laid before the board together: at a meeting of the board of directors, on the 30th, the next after this, two minutes of the council, one of the 21st, another of the 25th instant, were laid before the board: at the next meeting of the directors at Greenwich, dated the 30th of May, the board resumed the consideration of the council minutes respecting the beer, and took into consideration another minute of the 8th, relative thereto: at a subsequent meeting, which is the 21st of May, a letter of this date from the steward was read.

Whether there are any steps taken between the first complaint that was read, previous to this, which, if I don't mistake, is in October, 1775, between 1775, and May 1777, that is above a year and a half, whether any steps were taken to rectify the complaints that had been made before?—I do believe that there

were no fresh complaints laid before the directors from the council in that interval.

Were any steps taken in consequence of the first complaint in 1775, by the board of directors?—The board of directors did understand what the council had done in going to the brewhouse, and starting all that bad beer, which I believe they do not think they were perfectly right in doing, without consulting them; for it was a very large quantity of beer; which, though it was not fit for the use of the men, it might have been of some value to the Hospital; in consequence of that step, in the new book of rules and orders, that has been published under the charter, there is an express direction, that whatever things upon surveys shall be found unserviceable, shall not be thrown away or destroyed.

I want to know whether any punishment was inflicted upon the brewer, for offering to give to the men such a quantity of beer that was unserviceable?—I don't know that there was.

Was any punishment inflicted upon the officer whose duty it was to inspect into it?—No.

The Earl of Sandwich. Was there not a man, a turncock, that was detected in embezzling the beer, and turned off for it?—That is a very curious anecdote indeed; there was a man who had attended at one of those sinks or places where the beer is drawn, this man appears by the minutes; his name I have just read; he is a principal complainant in this business, and, as the council afterwards understood, a man who had stimulated others very much to complain; this man, in the absence of capt. Baillie, was brought before the council; it was one of those council of four only, that I have ever attended since I have had the honour to belong to the council. I did examine him, and took minutes, which I believe are now in my box; it appeared as clear as possible, that this man had embezzled great quantities of beer, had carried and given to the boys more than their proportion, more to the helpless ward than their proportion; that they had given him money and drams for the difference. He had embezzled the ale upon festival days in large quantities, and sent it out to his own house; upon all this appearing to the council, they ordered this man to be expelled, and I joined in that heartily; now the situation of these sinks, where the beer is drawn, is such, that it is in the power of the sink-men themselves to mix the beer with water; for there is a water-cock, as I understand, in order to cleanse the beer away that is spilt, that there is a water-cock at hand; the beer is drawn off in large black jacks, four or five feet high; it is much in the power of men standing there to draw beer, to make up a deficiency they have occasioned by embezzling, to fill it up with a little water; that struck me and the council, that this man, who was a principal complainant, had been the instrument in mixing the beer;

however this embezzlement was very clearly proved, and he was expelled.

What was the date of that expulsion?—Upon referring to the book, it is the 22d of August, 1777.

Capt. Baillie, go on with any further account you have to give.—If your lordships will be so good as hear the minutes of the 8th of May, 1777, read, and also of the 25th of April.

Mr. Ball reads.

“At a Council held in Royal Hospital for Seamen at Greenwich, April 25, 1777.

“The master plumber to the Hospital declared, that it was impossible such quantities of water could issue from any leak in the beer pipes, and proposed cutting off the water cocks and fixing a key, and lodging it with the commanding officer.”

“At a Council held the 8th of May, 1777.

“In consequence of a complaint from all the pensioners in the east dining hall, this morning, of the badness of the beer, which they refused to take, that it was watery and ill-tasted; and Mr. Godby, the steward, having, in the absence of the lieutenant governor, acquainted the captain of the week, that it was not fit to be served to the pensioners, the captain desired it might be started into casks and guaged, and another vat of fresh beer served: and this afternoon, at half past two o'clock, all the men in both halls complained to the lieutenant governor, that their beer was ill-tasted and watery; and he having directed the captain and lieutenant of the week, with the steward's clerk, in the absence of the steward to taste the beer, and report to him if there was just cause of complaint, and they having reported to him that the beer is bad, ill-tasted, and watery, and not fit for any men to drink, the lieutenant governor thereupon summoned a council, who sent for several pots of beer from both ends and the middle of each dining hall; and are unanimously of opinion, that it is thick, ill-tasted, and watery, and not fit for the pensioners to drink, therefore resolved to repair to the brewhouse, to taste the beer in the vats, and found two vats, numbers ten and sixteen, of the same brewing not fit to be served to the pensioners; and having tasted another brewing, which was something better, ordered that the same be served, there being none of a better sort in the brewhouse. The master brewer being asked what he had to say respecting the quality of the beer, acknowledged that it was weak, and of a very indifferent quality.

“Resolved, that the lieutenant governor be desired to wait upon the governor with a copy of the above minutes, hoping he will take some method with the board of directors for the relief of the pensioners. DANIEL BALL.”

Capt. Baillie. I have besides surveys of the officers of the Hospital upon the beer,

wherein they report the beer not to be good on the 5th of July, 1774; there is a survey upon the beer.

Read those surveys.

“Royal Hospital Greenwich, July 5, 1774.

“Sir; according to your desire, we have tasted the beer complained of, and find it thick and weak, but neither stinking nor sour; and as there is only a small quantity, sufficient to serve two days, are of opinion, that it is not so bad as to be thrown away, but that the pensioners may drink it.—We are, Sir, your most humble servants, Jarvis Maplesden, captain, A. Gordon, lieutenant, Theodore Court, for Mr. Maule, clerk of the cheque.

“I am of opinion that it is not bad small beer.—John Godby.”

“To the lieutenant governor.”

Here is another report signed the 2d of October, 1775.

Read it.

“Royal Hospital Greenwich, Oct. 2, 1775.

“Sir; agreeable to your desire, we have been to the brewhouse and tasted the small beer for the use of the pensioners; but as the master brewer has intimated to us, that he is to give his reasons to the board of directors next Saturday, relative to the said beer, we beg leave to postpone our opinion for the present.—We are, Sir, your most humble servants, Francis Lynn, W. Lefevre, J. Hossack, John Godby; for Mr. Maule, Theodore Court.”

“To lieutenant governor Baillie.”

Were they a committee from the council or from the directors?—The brewer intimated he was to give his reasons to the board of directors, and not to the council.

Were those people who have signed that report a committee of the council? Did the council authorise them to make the survey?—No; it has been the custom frequently, upon particular occasions, for the commanding officer to order such a survey.

Are there any rules and orders authorizing the lieutenant governor to order such a survey?—I don't know that there are; it has been the custom.

There was no person punished for this beer?—Neither the brewer, his servant, the steward, nor the clerk of the cheque, nor either of their clerks, that I know of.

Whose business is it to inspect the beer?—The steward and the clerk of the cheque, and their clerks, are to inspect the brewery.

The Earl of Chesterfield. Whether the beer has been in general good, or in general bad, in the Hospital?—There have been a great number of complaints.

That is not an answer. I want to know if, in general, the beer was bad? You said many people preferred being put upon the butler's list, because by that means they had their small beer at the Hospital, which is free from excise, and better than they could buy; I

don't think bad beer is better than money to buy good; I want to have that explained?—I don't understand that the small beer is always bad; but these last four years it has not been good beer, such as might have been expected in a royal brewhouse. I don't know the number put upon the butler's list annually; there may be ten or twenty added in a year, no great number.

Has that been the reason the last four years, as well as former years when the beer was good, of being put upon the butler's list?—The people upon the butler's list get almost as much as when they are upon the money list.

Have the numbers differed?—I don't know as to that point; many of the men prefer the butler's list to the money list.

Mr. Godby called in again.

Have there been any complaints made of the badness of the beer, since Luke Davis has been expelled?—I don't recollect one.

Wednesday, March 24.

The Lords met again on the business of Greenwich Hospital.

The Duke of Richmond rose and moved, "That the chairman of the committee do leave the chair, and that the House be resumed."

His grace insisted upon it, that as he meant to complain of a breach of privilege against capt. Maplesden, for sending away from the House, witnesses under summons from their lordships, his motion was a matter of right, and not of debate; that all complaints of breach of privilege, according to the standing orders on the journals, must supersede every other business; he therefore would not recede from urging, that the House be resumed.

His grace defended the pensioners who had cheered the lords, as they entered the House, and said, that there was no breach of the peace in their conduct; that the warmth they shewed did them honour; that it was the characteristic of British seamen; a sample of that honest zeal, to the repeated exertions of which this country owed all its greatness, its happiness, and its glory! He also laid it down as a matter of right, for the pensioners, or for any other persons whose cause either was, or was not, under the consideration of parliament, to stand in the street near the doors of parliament, so long as they did not commit what the law termed a riot, or what the law construed a breach of the peace; on the other hand, he argued, that captain Maplesden had been guilty of a gross insult to that House, in a most unjustifiable piece of conduct respecting the pensioners. Whatever might be the discipline, even the necessary discipline of the Hospital at Greenwich, he held it as a matter exceedingly clear and obvious, that when the pensioners were summoned as witnesses of that House, that during the operation of the summons, all discipline,

respecting them as pensioners, must be suspended; they were in charge of their lordships, and not subject to the controul of any other persons whatever. That telling the witnesses that he would mark them, and holding up his cane, were tokens of awe, and tokens of menace, which he could prove Mr. Maplesden used, and which might have a bad effect on the minds of men, who, from their situation, were under his influence as lieutenant-governor.

His grace said, such a mode of conduct might effectually check and prevent the object of the present enquiry, which was the discovery of truth. Upon the whole, he contended, that the matter highly demanded their lordships' attention, and that the present was of all periods the most proper to take it under consideration; because, if it were not immediately enquired into, such pensioners as it should appear necessary to call to the bar, in the future course of the enquiry, would be afraid to speak out, if they were not certain of meeting with the protection of their lordships; and the lieutenant-governor might go on, punishing and imposing mulcts upon the witnesses, if he were not given to understand, that the House kept a wary eye on his proceedings.

The Lord Chancellor as strenuously contended, that captain Maplesden's conduct rather merited the praise than the censure of their lordships. He declared he had himself observed the mob of pensioners, at the door of the House, when he alighted from his coach; that their behaviour was very improper and unseemly; that he expected to have heard something relative to it, in the course of last Wednesday's business; that it was extremely wrong to suffer the doors of parliament to be besieged either by Greenwich pensioners, or by any other description of persons, whose cause was under parliamentary enquiry; the example, though in the present case not very alarming, might be extended so far as to become matter of serious wrong; that the peers of that House, or the members of the other, ought to have free and undisturbed access to both chambers of parliament. If, however, the noble duke was resolved to make a formal complaint of a breach of privilege, undoubtedly he, or any other peer, had a right to prefer such a complaint; in that case, he intreated the noble duke to consider whether it would not be better to let the complaint stand over till the enquiry was ended; he was not himself aware that any pensioner who had been summoned as a witness, had been prevented from attending; if, however, the noble duke had proof of any such matter, the proceeding, let it originate from what quarter it might, was an atrocious act, and merited severe censure.

In answer to the learned lord's saying that the House was besieged, the duke of Richmond declared he had not heard of any sort of siege, but a siege of cheers and kisses from

old men and old women, pensioners and nurses in the Hospital, entreating to have their old lieutenant-governor again: that he understood several lords were almost smothered in the way from their carriages to the staircase.

Lord *Fortescue* declared, for one, that he never had been so kissed in his life; that it was rather unfair in the women to attack him in that manner, and open their trenches before him as they had done, because he was now an old man, and could not open his battery upon them in return.

The Earl of *Mansfield* supported the Lord Chancellor, saying, however, that he passed through a double rank of pensioners, who only huzza'd, and called out for the restoration of their old lieutenant-governor. The Lord President spoke also on the same side.

Lord Camden and the duke of Grafton on the side of the duke of Richmond. The former asserted that the pensioners had a right, a legal and a constitutional right to assemble before the door of parliament; that every British subject, and every man in existence, let his station in life be what it might, had the same right; and he hoped to God, the day would never come when that right should be taken away.

His lordship added, that he had observed the learned lord on the woolsack had only said, that the pensioners had assembled at the doors in an unseemly manner, by which expression, he conceived, the learned lord did not mean to dispute their right of assembling as a matter contrary to law.

The Duke of *Richmond*, in reply to the mention which had been made of the word 'riots' by the noble speakers in support of the Lord Chancellor, said he was no friend to riots; that he thought as ill of them and their abettors, as any man could possibly do; that it was grossly perverting the meaning of language, to apply the word 'riot' to an assembly of the poor pensioners at the door of the House the preceding Wednesday, who attended only with an humble petition; that he remembered what really deserved the name of riots, and that was, the assembling of the weavers at the door of the House some years ago: he remembered the proceedings of the committee instituted to enquire into the proper mode of punishing those rioters, and the sudden manner in which those proceedings were stopped; why they were so hastily stopped, the lords, who undertook that business, best knew.

Lord *Shelburne*, with his usual perspicuity, supported the duke of Richmond. He began with professing his extreme candour in the whole business of the enquiry; that he was determined to keep himself perfectly impartial, neither to give any judgment, nor to suffer any opinion to be drawn from him till he had heard the whole of the evidence, and was fully competent to decide on the subject. He was free to confess, that all he knew previous to the commencement of the present

enquiry, was from reading Mr. Baillie's book, above a year ago; that it was then sent him, for he had not sought after it; that captain Baillie had since called repeatedly at his door, but he never had seen him; that he had not an idea, that the noble lord at the head of the Admiralty could possibly be proved to have been at all concerned in causing bull beef, bad veal, bad shoes and stockings, and sour beer, to be served out to the poor pensioners. That the noble lord certainly must be above any such petty larceny baseness, however he might appear neglectful in not having taken proper care of the navy, or in discharge of the other leading duties of his offices, as president of a great and important board, where he might be employed with much honour to himself, and advantage to the public, in fitting out his fleets and giving his orders there; that he would own, were he in the noble lord's place, he had much rather stand accused of the greater crimes of neglect of the navy, &c. than have it imputed to him that he had either encouraged, countenanced, or winked at any such pitiful frauds and impositions on old men, old women, and helpless children, as the present enquiry tended to bring to light, and in which the noble lord seemed so highly interested by his regular attendance.

At length the Earl of *Sandwich* rose, and begged that the noble lord might be permitted to quit the chair, and that the House might be resumed. He said the present debate looked to him like an intention either to check or procrastinate the enquiry, or to ground a pretence for putting a stop to it altogether; that it was his interest and his wish that it should proceed.

His lordship said it would be unjust to him if any sort of impediment was thrown in the way of the enquiry. He considered the conduct of captain Maplesden as highly laudable; he had no doubt it would appear so, and therefore he begged that the House would also do the captain the justice to suffer it to be enquired into.

At length the question was put, and carried to examine witnesses on a breach of privilege.

Charles Smith, a boatswain, was called in, being one of those persons who was threatened, severely mulcted, and reduced to a private pensioner by captain Maplesden, for not dispersing what he called a mob, though he shewed him an order for his attendance on the House, when this witness appeared and was sworn.—The duke of Richmond put the following question to him:

* Did captain Maplesden threaten you with a cane or stick over your head, at the door of this House, on Wednesday last?

The Lord Chancellor immediately interrupted his grace, by putting the question thus:

When captain Maplesden came down to the door of the House, what did he do?

Upon this obvious alteration, the duke of

Richmond instantly ordered the witness to withdraw, and as soon as he had withdrawn, his grace charged the Lord Chancellor with having assumed a right to alter his question, a prerogative which did not belong to him.

The Duke of *Grafton* very warmly attacked the learned lord on the woolsack, and spoke to his want of fairness and candour with a very becoming spirit. His grace said the breath had scarcely escaped the lips of the learned lord, which served him to express the question, before it was perverted; observing at the same time, that he would never suffer such a conduct to pass uncensured, whilst he had the honour of a seat in that House; it is true, he said, persons may be called up there for the purposes of administration; if, however, a day should arrive when the House swarmed with lawyers; if the benches were stuffed full of pleaders, he hoped the ancient and hereditary nobles of the land would have spirit enough to resist the confident incroachments of that profession, and would neither suffer sense and reason to be cavilled away in verbal distinction, nor the forms and orders of their proceedings to be altered at the will of any one lord, however high in office, however great his abilities, however respectable his character.

The *Lord Chancellor* left the woolsack, and said he was exceedingly astonished to hear himself accused of having assumed any thing which did not properly belong to his situation; that on the present occasion he had no difficulty to admit, that he had altered the words of the noble duke's question; in justification, however, of his conduct, he had only to say, that he wished to expedite the proceeding of the enquiry, and therefore took upon him to alter the question, as it appeared to him to be a leading question, which in his grace's form could not be put, without some alteration; but as it was rather in point of form than in substance, he should have first remonstrated with the noble duke, and then have asked his permission to have changed it.

His lordship then, instead of defending the dignity of a private birth on the equal line of nature, descanted on the labours of his profession as a compensation for the honours attached to it, and that those labours which hereditary lords were not born to, should make them happy in their own situations, without reflecting on those of others; that when he looked back on the lineage of the ancient and hereditary nobility of the kingdom, it was, however, not a little flattering to him, that a great many of the present peers had sprung from men who had filled the office he had the honour to hold, and some from persons not equally intitled to the honours which they possessed.

The Earl of *Mansfield* justified the Lord Chancellor's mode of altering the question, and said it was a common custom in both Houses of Parliament, for the ease of business; that he had sat many years in both

Houses, and had often been a witness to it, and never heard it objected to before.

The Duke of *Richmond* ably defended the propriety of his question, and having shewn the advantageous ground of truth over law, declared, that the learned lord's quoting the custom of the other House of Parliament should not satisfy him. That the learned lord on the woolsack had no right to alter his question without consulting him, and that if he did not allow that he had assumed an improper power, he would move the House in form, that the learned lord had done what he was not warranted to do by the forms of the House.

The *Lord Chancellor* again left the woolsack, and repeated what he had said, in acknowledgment of his having no right to alter any lord's question; he declared he had done it for the sake of accommodating business; that as to consulting the noble duke, he had no right to consult him, for that the moment the noble duke had uttered the question, it became the question of the House, and the proper mode would have been for him to have appealed to the House, if the question ought to be put. He thought it, however, much more manly to confess an error than to persist in it, and therefore he was easy in declaring, that he had, though from a good motive, acted contrary to order.

The Duke of *Richmond* admitted what the learned lord had said as a sufficient explanation, and jocosely added, "That hereditary birth did not always exclude persons from labour; for though he was born noble, and was not in office, he believed the learned lord would not say he had never any labour upon his hands."

At length the Committee proceeded to examine witnesses, and Charles Smith, boatswain, was again called in and examined.

Wednesday, March 24, 1779.

Charles Smith, a Pensioner, called in again.

Inform the House whether you were here any day last week.—Yes; last Wednesday.

Were you ordered to attend the House?—Yes.

You had received an order to attend the House?—Yes.

As a witness?—Yes.

Did you attend it?—Yes.

Inform the House what captain Maplesden said to you, what passed between you?—Nothing, that I know; but we attended here; we were giving three cheers to every lord, and wishing that we might receive our lieutenant-governor Baillie again: captain Maplesden came out and ordered silence, and ordered me to withdraw the men off; I said, if he could not do so, to so many hundred men, how could I do it? accordingly he ordered me to withdraw myself: I said, I had as much right as another man to stand there, and I staid

there till the duke of Bolton came up; and when the duke of Bolton came up, he spoke, and asked what was the reason; and I said, that we all staid there for the sake of wishing that we might have our lieutenant-governor into the house again, that was all that was said, and the mob all dispersed directly; if you call it a mob, there was no mob in the case, no quarrelling, but only gave three cheers to the lords, and we all dispersed directly.

Was that upon the duke of Bolton's desire?—Yes; he desired us to withdraw.

What did captain Maplesden do to you?—He ordered me to come and draw the people off; I told him if he could not do it, how could I; for I was but one man? he said, then get away yourself; I said, I had a right to stay there, as well as another person.

Did captain Maplesden do any thing to you?—He came with his stick, with a flourish over me, and went to run it in my face. I said, it is a thing beyond my ability; if you cannot do it, which way can I? he up with his stick, and was going to shove it into my face, because I did not do it. As soon as the duke of Bolton spoke to me, after we had given every body cheers, we withdrew directly; not by my order, but by the good consent of every body; after they gave the lords three cheers when they came in, then we withdrew.

How long were the three cheers after captain Maplesden had been talking with you?—Not more than a quarter of an hour.

Whether you said any thing to captain Maplesden, relative to your being summoned to attend this House?—Yes, and pulled out my pocket-book to shew him my summons; moreover, he did not take it from me, but I put it into my book again, after the people had all withdrawn.

What did captain Maplesden say, when you shewed him the summons?—Nothing at all then, for he did not take it out of my hand, and so I put it in my book again; after we had done that, we spoke to the duke of Bolton again, and then we all withdrew.

Are you very sure that you mentioned to captain Maplesden, that the paper that you shewed him was a summons, or a subpoena, from the House of Lords?—Yes.

You are sure of that?—Yes, and pulled it out, and was going to shew it to him, but he did not take it out of my hands, but I opened it to him.

When did you return to Greenwich Hospital?—That same night.

What happened to you, after you returned to Greenwich Hospital?—The very next day he ordered all of us, that he picked out as he thought proper, to appear at his own house, and he kept us all in doors and examined us; after examining us, bringing us to a council that we have in our house once a week; but instead of that, he made a private council of it; he broke me, that is, taking 1s. 6d. out of 2s. 6d. which is my salary per week.

You were summoned to a council?—Not summoned to a council; he ordered us there instead of summoning us properly to the council-room, as it should be; he made a private council of it to himself, and so called us all, one by one; and as for my part, he examined me so; at last he damned me, and bid me be get out of his house: I made answer, I did not want to come there, if he had not sent for me. On the Monday following he had a council on it; he brought me to the council and broke me, and he broke another; he mulcted another 20s. and another 10s. and another 5s. and another 4s.; and then he expelled a nurse of the house, for three months; and the man that was mate of the Painted Hall, he happened to kick a dog in the Painted Hall, and he was turned out of the house.

What do you mean by saying captain Maplesden broke you?—I am a boatswain of the Hospital, and I wear this lace; now he has broke me, and taken this lace away; and out of my pay, which is 2s. 6d. a week, he has taken 1s. 6d. away, and I have but 1s. remaining.

Was that done by the order of the council?—By his own order; it was a private council.

On what day was that council?—It was a private council, which should have been on the Friday, he brought it on the Monday.

Was any other punishment inflicted upon you?—I was to go into the hall and stand in the pillory, and ask his pardon.

Whether you did go into the hall and stand in the pillory?—Yes.

What was the crime you was charged with?—For disobeying his orders at the House of Lords, in not taking the mob off as he ordered, which was a thing impossible for me to do.

Whether you saw captain Maplesden, on the Wednesday, endeavour to drive away any other person from the door of the House?—No, he only pitched upon me; and as he did it, another man, a man that attends upon our office, took our names down, and another fellow that was there, was his witness; so there they took down what few people they pitched upon, and those he owed an animosity to; he took our names down.

Whether you did go away, on the Wednesday, in consequence of captain Maplesden's order?—Not directly, not before we were done with here, at the House of Lords, then we went home.

Was it your charge to bring the witnesses from Greenwich, to the House of Lords?—No, only I came up in the coach along with them; but these people were all here long before we came.

Whether you cheered any particular lords, or whether you could distinguish one lord from another?—Not at all; we cheered every one as they came by.

Who set you to cheer the lords?—No soul, it was by nobody's order, but only by the

men's own good will. We witnesses did not know that the pensioners were all here.

Who put you upon cheering the lords at all?—God Almighty knows, it was their own doing.

Did any body put you upon cheering the lords?—No.

Was it of your own thought?—Our own good will.

Were you the oldest boatswain attending, or ordered to attend the House?—No.

Whether any of the pensioners that were summoned to attend the House of Lords, to give evidence, were sent away before they had given their evidence?—We did not go away before the House of Lords broke up.

How many pensioners were there?—God bless my soul! I cannot tell.

As near as you can guess?—I suppose 2 or 300.

Were they all witnesses?—No, no; not we witnesses; I don't speak of them; I speak of the people that were cheering.

How many of them were there that were witnesses?—I believe about a dozen.

Whether you met with any obstruction in coming down to the House of Lords to give your evidence?—No; we came down very well, and went home again very safe; nobody affronted us, only Mr. Maplesden.

Did captain Maplesden obstruct your coming to give evidence?—No.

Did captain Maplesden order all of you, or the witnesses only, to go?—All.

Did captain Maplesden ever order you not to come again?—No, he never was against that.

When you retired, was it at the order of captain Maplesden or at the desire of the duke of Bolton?—I must tell you the truth; by the duke of Bolton's order.

How long had captain Maplesden ordered you to retire before the duke of Bolton ordered you?—About a quarter of an hour.

Whether captain Maplesden ordered you to retire after you had shewn him the summons from the House of Lords, or before?—Before; I offered to shew him the summons then, but he would not take it out of my hand.

Did captain Maplesden order you to retire after you had shewn him the summons?—Yes; but we did not disperse before we gave the last three cheers; not before the duke of Bolton spoke to us.

Whether captain Maplesden ordered you to retire after you had shewn him the summons from the House of Lords?—Directly; he did not take it from me, but he ordered me to retire then, and I said I had as much right to stay there as any one there.

When was that? Before he ordered you to go, or afterwards?—Afterwards.

Was it before or after you shewed him the paper?—It was at the time I shewed him the paper; when I put it up into my pocket-book, then I told him that.

Did he, after you had shewn him the paper, order you to go home?—No, he did not.

Do you not understand that each pensioner of Greenwich Hospital has, by leave, a right to be absent 24 hours?—Yes.

Were all these that came here under that description, persons that had a right to the 24 hour's absence?—They were all at home; I question whether there were five of them laid out.

Have any officers of the Hospital, if men are absent during those 24 hours, any more right than any other persons, without they find those men are acting disorderly, to order them to disperse?—No. They ask leave before they come out, and they may stay.

Whether captain Maplesden ceased giving you any orders as soon as you shewed him the order of the House of Lords for your attendance?—He spoke no more to me; he never gave me any more orders afterwards.

He did not order you to retire?—Not after; he had no more to say afterwards to me.

How long have you been in Greenwich Hospital?—Eleven years.

How long have you been a boatswain there?—Ten years and ten months.

How long had you been at sea before you went to Greenwich Hospital?—Forty years.

In what service have you been?—Thirty years in the king's service.

Were you ever in the East Indies?—Yes.

And in the West Indies?—Yes; and at Newfoundland, and other places.

Did you use any other words to captain Maplesden, except that you had as good a right to be there as the other people?—No other words, as I know; not any words of impudence.

Were you ordered back to Greenwich?—No.

Only to keep farther off?—Yes; and I came into the lobby afterwards.

[Charles Smith withdrew.]

Mary Rose, a nurse, a seaman's widow.

What passed between you and captain Maplesden, on Wednesday last, at the door of the House?—When captain Maplesden came out, he shook his cane over his head, and bid us disperse, when we were seeing the honourable the House of Lords come in.

Over whose head did he shake his stick?—Over his own head; and bid us disperse by order of the House of Peers.

What did captain Maplesden say?—He swore a very great oath, and bid us disperse; and, damn it, if we did not, he would mark us all, and punish us very severely when we came home.

Were you punished?—Yes; I was brought before the honourable council, and mulct half my wages for seeing the honourable peers come; and was very basely ill used by what he was pleased to say to me besides.

What did he say?—He made use of a great many words, called me hussy and jade, and used a great many words not proper to make use of before your lordships.

Were you summoned to attend the House on Wednesday?—I was; and I told him so; and he damned me, and asked me, how I dared to come without an order from the house.

What house do you understand he meant by saying an order from the house?—That I did not ask leave of Greenwich-house; I thought the summons was sufficient.

Did he order you to go away after you said you was summoned by order of the House of Lords?—Yes, he did; and told me he would mark me for so doing, and take notice of me when I came home.

How much were you fined?—Twenty shillings.

Where did captain Maplesden bid you go?—He bid us disperse and go home; these were the words he said.

Did you shew captain Maplesden the summons of this House?—Captain Maplesden knew very well that I was summoned; he asked me, and I told him, Yes; he did not ask me to shew it to him.

Did you offer to shew it to him?—No; he did not ask it, and I did not shew it.

Was it said to you in particular, or to you all together?—He bid us all disperse.

Then what he said was no more spoke to you than to the rest?—No; he bid us all disperse; and he told me, when he went by me, that he would mark me when I got home; and so he did. [Mary Rose withdrew.]

Dorothy Perry, a seaman's widow, called in.

Were you at the House of Lords on Wednesday last?—Yes.

Did you see captain Maplesden there?—Yes.

What passed between captain Maplesden and you?—When he came out of the coffee-house, there were a parcel of people standing by the side of the coffee-house, pretty near the door of the House; when he came out, he came up to boatswain Smith; he passed me; boatswain Smith stood beside me; he turned to him; he had a cane in his hand; he ran it up close in boatswain Smith's face, and damned him, and asked him how he came there: boatswain Smith said his feet brought him there: captain Maplesden damned his feet, and desired him to take all the men and women home, and take every body away. He said he did not bring them there, and it was not his business. Captain Maplesden said if he did not, he would punish him. Boatswain Smith said he could not help it, whether he did punish him or not, for he could not take the people away. Captain Maplesden said, if he did not, he would mark him.

Did any thing else pass in your hearing?—Not concerning captain Maplesden; we came away soon after.

Did captain Maplesden say any thing to you in particular?—No. He spoke to boatswain Smith to call us all away. Us that had summonses said we had summonses, and had

therefore a right till we were taken into this House. Your lordships had not all come in then.

Did you tell captain Maplesden that you were summoned?—I told it in his hearing, close by him; when boatswain Smith said he had a summons, he damned him, and us all, and told him to take us away, and the summonses too.

Did captain Maplesden order you to go away, or to go to any particular place?—He did not order us to go to any place here in London; he ordered us to go to Greenwich.

What time of day was it that he said this?—About two o'clock, to the best of my knowledge.

Did you stay till this House was up?—Yes; we staid till the House broke up that night; it was about eight o'clock.

Did all the witnesses stay till the House was broke up?—Yes.

Did the rest of the people disperse?—Yes; every body but them that were summoned went away directly.

[*Dorothy Perry*, nurse, withdrew.]

After the examination of these three witnesses, who fully proved the menaces and mulcts of captain Maplesden towards them, it was moved by the duke of Richmond, that the captain might be summoned to answer for this breach of privilege to the House; but it was contested warmly by the other side on the ground of impropriety.

The Lord Chancellor, lords Mansfield and Bathurst (for all their arguments ran in the same stream) stated, that as there was no degree of criminality proved against captain Maplesden, it would be contrary to their lordships' justice to order his attendance.

The duke of Richmond, lord Camden, and many other lords combatted this doctrine with great calmness, clearness, and precision; lord Camden, in particular, asked what greater degree of insult could be offered their lordships, than by attempting to drive away witnesses from their attendance? As to the actual forcing them away he did not, probably because it was not in his power, but he held out terror to them, to do so; he commanded them away, threatening, with oaths and imprecations, to mark them; and to confirm all this, the very next morning, without waiting for the usual council day, he fined, and otherwise punished them severely as delinquents.

Notwithstanding this, a majority of 55 to 20 thought there was no manner of occasion for captain Maplesden's attendance.

Adjourned till to-morrow.

Thursday, March 25, 1779.

Captain *Baillie* called in.

Whether there have been any abuses in the linen in Greenwich Hospital?—There have been many complaints made to me by

the pensioners of Greenwich Hospital, that the quality of the linen has been very different from what it used to be, that it has decreased in size as well as in goodness.

Inform the House whether you made any experiments, to know whether it was decreased in size?—In consequence of that information, I sent the proper people, as I thought they were, the boatswains and nurses, into the different quarters of the Hospital, to measure the linen throughout the Hospital, in particular in the infirmary, where I thought it was of the most consequence; the persons who measured the linen there, brought reports to me that all the men's sheets, upon an average, were deficient in half a yard in every pair, one with the other; some wanted a yard, some three quarters of a yard, and the average about half a yard upon the whole, generally throughout the Hospital.

Is there any body here that can speak to that?—There are the people here who measured it; they likewise measured the shirts; Thomas Field measured them.

As to the goodness of the linen that has been delivered out at this time, in comparison with what has been delivered out before, have you any samples of that?—There are patterns of what they had some few years ago, and what they have now.

Have you some with you now?—I brought them with me for that purpose, that there might be no mistake as to the evidence.

Be so good as to produce them.—[Captain Baillie produces several samples.] This is the bed-ticking the men were allowed formerly, such as any nobleman in this House might lie upon in comfort. This is what they have now; it is an inferior quality, not worth a quarter part of the money of the other; it has no duration in it, it is not fit for the pensioners of Greenwich Hospital. This is what they used to have formerly for their shirting; it is of a very good quality; there is a blue stripe in it, that there might be no reduction whatever in the cutting it; the mode now is greatly altered, there is no such precaution taken, the linen is not worth half the money, nor will it last half so long; it is obliged to be patched and mended before a year is out; in like manner the nurses of the Hospital, a number of whom are very respectable characters, there are a matter of 24 of them that are sea-officers' widows, reduced to that sad necessity of being common nurses; the gowns they give them are not so good as they used to be, they are worse than work-house clothes, worse than pauper's linen; these are the patterns, [producing them] their pillow-cases are made now of dowlas, of a bad quality, formerly it was a very good cloth, such as any body might lay their heads upon in comfort; their beds were formerly filled with very good wool, and flock of the finest sort, now it is rather a cutting of mops, or something of that sort.

Who is the person that measured the linen?
—Thomas Field.

Mr. Maule, the Clerk of the Cheque, called in.

Have you made out that account you were ordered to do?—I have. [It is delivered to the House.]

Thomas Field, one of the Boatswains, called in.

Did you measure any linen belonging to the Hospital at any time?—Yes.

How much did you measure?—I measured 388 pair of sheets in the infirmary.

How much did they measure?—They measured half a yard short and better in each pair of sheets.

Half a yard short of what?—Of the cloth; I had been told by the lieutenant governor, that they were to be two yards and one half long, five yards in each sheet; there are two breadths in a sheet.

Upon an average, how much did they measure short of that?—Better than half a yard.

In each pair, or in each sheet?—In each pair.

Upon what number of sheets did you say you made this measurement?—388 pair.

And upon each of the 388 pair, if I understood you right, there was a deficiency of half a yard?—There was in each pair.

Did you measure any other linen?—Yes, all the boatswains in the House had orders to measure the linen that belonged to the pensioners that were in their division.

Did you measure them?—I measured the linen that was in the division that I belonged to; they run 95 yards short upon shirts and sheets, 160 sheets, and 160 shirts.

What you mentioned before related to the infirmary?—Yes.

What you speak of now relates to your ward?—Yes.

And in your ward how much did you find short in the sheets and shirts?—95 yards.

What do you imagine was the allowance for shirts?—I was told three yards and an half.

Did you measure the linen in any other wards?—No, none at all but the division I belonged to, and the infirmary sheets.

[Thomas Field withdrew.]

Mr. Godby, the Steward, called in.

Is there any allowance made in the Hospital for the measure of sheets and shirts?—Three yards and an half for a shirt, and five yards for a sheet.

Were the sheets less than they used to be the last time they were cut, at the time that they mention?—I believe they are full as long now as ever they were, and are made in the same manner in every respect.

But were they not half a yard less in each pair of sheets than before?—No.

Are you positive and clear in that?—Yes; it cannot be; if any sheets are shorter than the standard, it is because the pieces of sheeting run a certain length, and we cut them so as not to leave any remnants; that is the

establishment in the Hospital, and has been always the practice; at least for 40 years back to Mr. Bell's time; I have pursued the same method, and employed the same people, and I have no reason to believe that they have made away with any of it.

You say there is the same quantity in the sheets now as formerly?—The same.

How could it happen, that the sheets, when measured, appeared to be half a yard less?—I fancy it will not appear so, when your lordships call upon the clerk of the cheque's clerk, who is a cheque upon my office; he receives these sheets, and is a cheque upon them.

You are positive they are the same size as usual?—Yes, the same size as usual.

Whether you speak absolutely from having measured the present sheets?—I have seen a great many of them measured, and I believe all the linen is accounted for very clearly; it appears so to me.

I wish to have a direct answer; have you measured all these sheets yourself?—Not all; it is impossible I can measure 8 or 9,000 pair of sheets; that cannot be supposed, I should imagine; I have seen a great many of them measured.

Upon what conviction then do you deliver this evidence to the House? You positively assert they are the same length the old ones used to be, without any kind of diminution?—I have seen some of them measured, and have measured several; I have taken here and there one of a quantity when they are made, and have measured them the same as they used to be in every respect.

What quantity may you have measured yourself?—When there have been two or three hundred pair at a time delivered into my office, I have measured three or four, and have been satisfied. If I have found a deficiency in any respect, I have looked farther into it.

What is the measure?—Of the sheets five yards.

Did those you measured measure five yards?—They measured something under, because we cut them so as not to make any remnants.

I ask you the positive measure of what you measured yourself?—Sometimes a nail of a yard short, sometimes two nails short.

But none of them were positively five yards long?—Some of them were.

Of what length were the sheets that you did measure yourself?—Sometimes a full length, sometimes wanting a nail of a yard, at other times two nails perhaps; but then, when I came to enquire into the matter, I found that it should be so; a piece of sheeting, if it runs 40 yards, would make five pair of sheets, but they run 38 and an half, and 39, and 39 and an half; they are generally about that length, and then we make just the same sheets as if they run 40; it is an advantage to the Hospital, and is the method that was always adopted by the former stewards.

Is it not somebody's province to measure all the sheets?—The people in my office measure a number of them, but not all of them, I dare say.

Whether or not the measurement you have taken of these sheets was before or after the complaint was made by captain Baillie?—I have measured them since the complaint, and I have measured them before.

Is it your office properly to measure this linen?—It is with the clerk of the cheque, never without him.

Is it your practice, as well as your office, constantly to measure them?—Yes, we always measure some: I hardly ever knew it otherwise, and I constantly attend.

What is the reason, if it is your duty, that you don't measure them all?—It is impossible for me to measure them all, the nature of the business would not admit of it.

Why is it impossible?—On account of the quantity of it; because if we were to do business in that way, there would be a need of ten stewards and ten clerks.

Would there not be time enough for you and the clerk of the cheque to take your leisure, if you have not sufficient time immediately, to measure the whole number?—I apprehend it is a thing that could not be expected of any steward.

Is the whole number measured by any body?—I don't believe they are, indeed I am certain they are not.

Have you always took the measure upon the faith of the contractor to be according to the contract?—No, I measure here and there a piece; if I find a deficiency of a yard or half a yard, I go farther, and measure more, and if there is a yard deficient in any one of those pieces, I deduct a yard from every one of those pieces I receive.

If from the number of sheets you have spoken to, you had found a deficiency of half a yard upon every pair of sheets, should not you have thought it worth your while to complain to some body of the Hospital, in order to rectify that abuse?—Certainly not, these sheets have been delivered out of my care a twelvemonth.

If in the measurement of the sheets you yourself had discovered a deficiency, whether you would not have thought the Hospital greatly defrauded by such a deficiency?—It could not happen in my office.

But I ask you if you had discovered a deficiency?—If so, certainly.

If again, in the measurement of 388 pair of sheets, you had discovered, as the witness discovered, a deficiency of 195 yards, which he has sworn to upon his measurement, would not you have thought that a fraud too?—Not if it was accounted for some other way.

I ask you, if upon your measurement you had found the deficiency?—No doubt of it; if there was a deficiency of 190 odd yards, there must be a fraud somewhere.

Do you know of any complaints being

made to the council of a deficiency in the linen?—None.

You said the sheets were delivered out a year before they were measured; will not washing contract linen?—We must make allowances certainly for cutting out, we must make allowances for hemming, and for the shrinking in the washing.

Whether upon the delivery of the sheets, you do or do not apprehend it to be the duty of the steward, before they have been washed, to measure the sheets, or at least to measure such a quantity as you think they may be able to do?—If I understand the question right, it is, whether I measured the sheets before or after the washing; I have nothing to do with them after they are washed, and therefore could not have measured them after they were washed, except what were returned to my office.

Whether you understand that linen shrinks or stretches by washing?—I understand it shrinks by washing; I have tried the experiment within these six months.

What has been the result of the experiment?—I saw five yards of sheeting cut off, the clerk took it home, and had it made in his own family, and washed, and then brought it to my office again; upon measuring it, we found it had shrunk near two nails of a yard in one sheet; now that would come out something more upon wearing, I should think half a nail, but never near the full length.

I would ask you not what you conjecture, but whether you made any experiments of measuring the sheets, and measuring the same sheet, after it had been washed and wore for a twelvemonth?—No, I have not.

You mentioned, that when a piece of linen ran somewhat short, that they cut the pair of sheets that were last made, so much shorter, in order not to cut a new piece?—We deduct something from every sheet, or else the last sheet would be so short, it would not be fit for use.

How far is your rule to go by, when you find a piece short of its measure? You say forty yards ought to make five pair of sheets? Yes.

Suppose a piece of linen is thirty-nine yards?—Then we make an allowance accordingly, we divide it equally.

Suppose it is thirty-eight yards?—We divide it accordingly; but if it is only thirty-seven or thirty-seven and an half, so that we think the piece would be too short for use, that there would be a complaint, we make only seven sheets and leave a remnant.

What is the precise rule you go by to term the piece too short, whether it is thirty-seven yards, or thirty-seven yards and an half?—It is left to the judgment of the persons that cut them.

Who are those persons?—Two of the clerks' wives have cut them for late years before my appointment, and before my predecessor's, I believe.

Who are those people?—My first clerk's wife, and the clerk of the cheque's wife, I believe, cut them all.

It is entirely left to their discretion, whether they choose to cut any quantity that may be in a piece into five sheets?—My clerk often applies to me to know my opinion; if he has any doubt about matters of that kind, he has applied to me to know what I would have done in that case, and I have given him directions accordingly.

I understood you to mention two women?—Yes, but under his inspection.

Whose?—My clerk's, and under my own when he applies to me.

Is it left to the women or clerk's, or your discretion, or whom is it left to, to be determined, what quantity shall be put into eight sheets?—When we deliver the linen out, I take it down in a writing, upon paper, so many yards delivered, to be made into sheets; the clerk of the cheque, or his clerk, is present, and cheques that account; when they are delivered in, we see that it answers to that account, as near as possibly may be; we must make some little allowance; if there appears an inch in a sheet short, we suppose it may be from cutting, or some such thing.

You say, forty yards is to make eight sheets; is there not any rule by which the number of yards is ascertained, that is to make four pair of sheets; suppose the piece is thirty-six, thirty-seven, thirty-eight, thirty-nine or forty yards, have you any rule when to stop, and not to make four pair of sheets out of the piece?—They know my instructions and directions in general, which are to make five yards in a sheet, but if the piece runs, so as by deducting a little from each sheet, they will make the full number, then it is left to them; but upon delivering them into my office, if I think they are made too short, I send for those people, and give them my directions to cut them longer in future.

Is the committee to understand, that your directions go to these people, in case there is a little less, that you leave that little to their discretion, and then they are to bring them to you, and you are to judge whether they have used that discretion properly or not?—Certainly so.

Then are you answerable whether they use that discretion properly?—Yes, I and the clerk of the cheque.

Then whether you ever heard of those three hundred and eighty-eight pair of sheets being deficient half a yard in each pair of sheets?—I have read it in Mr. Baillie's charge before the committee, I believe, but never before; I am not sure though whether it was not made to the board of directors upon my representing the matter; how it was to the committee that he afterwards brought a fresh charge before the board of directors, which was, to the best of my recollection, heard before the board, and I believe there is a minute upon it, but I cannot recollect when it was.

Did you take any pains after this measurement has been made, and you heard of it, to examine these sheets, and have them measured again?—No, I did not.

Did you have any of the shirts measured to see how they were?—Yes, when they were returned into my office.

What do you mean by when they were returned into your office?—Of late there has been a number of pensioners serving in his Majesty's yard, and they have wore out their linen much more than if they had not been employed, and at the end of a serving, we have had three or four hundred shirts returned, which have been washed and delivered out according to my discretion; I have delivered out four or five hundred within this twelvemonth of that kind, and when I have taken in the old ones, I have had them measured, to see if there was that deficiency as complained of, and talked about the Hospital.

Had you any measurement made of those sheets of which the witness that has been last at the bar has given an account in his ward?—No, I had not; I have nothing to do with them in his ward.

Have you measured any of the sheets in the infirmary?—No.

You said that there were five hundred, I think, returned into your office; I want you to explain whether you measured those shirts?—I measured some of those upon being returned into my office.

How did they turn out?—They did not turn out as represented; I remarked it to my clerks and people in the office, that those shirts were what I thought a good length, and what one might expect, allowing for making, and proper allowances that ought to be made in my opinion.

You say they did not turn out as represented, by whom represented?—By the lieutenant-governor Baillie; so far as I thought, they were a good and proper length.

Did you measure those complained of in the infirmary?—I did not; I did not know in what part of the Hospital he had been to measure.

Whether the contractors are not required to deliver in their pieces as near to forty yards as possible?—They are Russia sheeting, and they generally run, I apprehend, about that length; it is not, as they are Russia goods, in our power to alter them; we buy them at so much a yard, and therefore, when we take in the pieces, if they are thirty-seven yards, they are marked on the outside, and I measure here and there a piece, to see whether they run the length they are marked.

And would it be impossible to have all the pieces of that length, if they were required to send them in of that length?—I cannot speak to that question; but I apprehend, as they are made in Russia, that it would not be an easy matter to do.

Whether they are not paid according to the number of the yards they contain?—

According to the number of yards they contain.

Then the Hospital only pays for thirty-seven yards, if the piece contains no more?—No.

By what authority or order is this measurement settled?—By a former steward; it is a method he proposed.

What do you imagine to be the reason of there being any standard at all?—He thought it proper, or else we could not settle our accounts; we settle our accounts by that standard.

Don't you imagine that standard might be settled, because it was a reasonable size to make sheets of?—Certainly.

Do you think that ought to be departed from?—I find Mr. Bell, the steward, who settled that account, has varied from it himself; for I have a sheet in my possession, which has been in the possession of one of the matrons a number of years, and I find it not longer than those in general made in my time.

When you find these pieces don't answer, where would be the great inconvenience of having one sheet pieced? Or would not that be more likely to keep the rest according to their standard, rather than to have so many cut short of the standard?—There is no inconvenience, at least I never heard of a complaint of deducting that small quantity, and it is an advantage to the Hospital, and there would be a loss, if we were to make them exactly of a length; there would be a loss of 15 or 20*l.* in the clothing, to the Hospital.

Do you imagine that it is a benefit to the Hospital, that the standard should be diminished, to the inconvenience of the pensioners?—It is neither an inconvenience nor a prejudice to the pensioners, I am clear of that, and it is a benefit to the Hospital.

Then do you imagine that the standard is too great?—No.

Then account for why you think it no inconvenience to the pensioners to have the sheets shorter than the standard; and yet you think the standard not longer than it ought to be?—If it was less, and a piece was to run over forty yards, we should have an overplus; and we could not then account for our cloth at all.

You have, I think, said, that as far as the ward extends, where captain Baillie complains of the grievance, you never have taken any measurement at all?—In that ward, I never did as I know.

Have you heard, that it was usual to deliver a pattern made up of sheets or of shirts, answering the description that was laid down; and whether it was or was not a very common thing to deviate from that pattern shirt or sheet?—There is no pattern of a shirt or a sheet, but the standard.

They are all made in the house?—Yes; they are made from my office.

You say it would be impossible to go through

the measurement of the whole, without having a great many people under you; or do you not think it necessary to take indiscriminately the different wards, and to try such a number in each different ward, to see whether they answered?—If you understand by their being made in the house, that they are made within the walls of the Hospital, they are not; there are none, as I know, made within the walls.

Whether you, or any of the people under you, have any perquisite upon cutting out this linen?—I have none.

Nor the people under you?—Nor the clerks; except their wives that make them are paid so much a shirt, and so much a sheet.

Are there any remnants allowed to them?—No; no such thing is admitted in any respect.

The manufacturers of linen in general, I believe, allow an over-measure to what they set down; now does a piece, nominally of 40 yards, measure no more than 40 yards?—In this case it does not; because we don't contract by the piece, but by the yard.

But the person that contracts for this linen, contracts by the piece?—No, by the yard, at so much a yard; if a piece contains 37 or 38 yards, we pay for no more than 37 or 38 yards.

But a piece that is set down to you as 40 yards, should measure 41 or 42 yards?—In this case they charge to a quarter of a yard; they charge 37 and a quarter, or 37 and three-quarters.

They always allow a piece; a thumb as they call it?—There is no allowance made; the contract is for so much a yard; if we contracted by the piece, then, in most pieces of linen, there is an allowance of three-quarters of a yard, or a yard over; but as we contract by the yard, they measure to half a yard, or to a quarter of a yard.

The contractor buys it of the linen-draper by the piece; then, of course, he should serve his contract with the pieces as he pays for them; and if he pays for but 40 yards when he has 41, he should charge but 40.—It has always been customary to charge to half a yard, or a quarter of a yard.

Whether you recollect your having said, that they contracted by the piece; that sometimes the piece ran 37 and sometimes 40 yards? My reason for asking this question is, to fix it that the contract is made by the piece.—No, it is not; and your lordship misunderstood me.

[Mr. Godby withdrew.]

Mr. Maule called in.

Whether the sheets are of the right length at present?—I believe so.

What reason have you to think that they are?—I have known the Hospital a great many years, and, till very lately, I never heard of a complaint at all of the kind.

What reason have you to think that they are not shorter than they were formerly?—I

don't know that they are shorter than they were formerly.

Did you never hear a complaint of the kind?—Not till very lately; and though there is an established quantity for each sheet, it has not been the custom to make them so, if the pieces of cloth did not run in proportion to the number that each piece should make; and I believe that has always been the custom, since the Hospital was first established.

Are the pieces of linen not always of the same length?—They run from 37 to 37½, 38 and so on to 39½; very seldom to 40.

You seldom find any pieces of the full length?—Very seldom.

Do you speak from your certain knowledge, that the sheets are not now shorter than they were before?—I don't say that they are at present.

You say they are not shorter now; whether they were not shorter before the complaint was made by captain Baillie?—I believe they are now, as they have been made for many years past.

Do you speak from your certain knowledge that the sheets are now no shorter than they were before?—I never heard till very lately, as I said before, that the sheets were shorter now than they were formerly.

Answer that question directly; do you know of your own knowledge, that the sheets are now of the same length as they were before?—All that have come within my knowledge.

How many have come within your knowledge?—A great many.

How many?—I suppose 100 pair or more.

Out of how many?—Some thousands.

How many thousands?—Very likely three or four thousand.

How many hundred pair, out of these three or four thousand, have you measured?—I suppose an hundred pair I have seen measured.

And were those equal to the standard?—I have already told your lordships, that I never knew that they were to the standard.

What rule have you to go by to say, that in former times the sheets were shorter than the standard? By how much were they shorter?—I cannot speak particularly to that; but I do, from my own knowledge, know that the sheets were formerly made as they are now, and in the same manner, and by the same people.

You say they were shorter, but don't know by how much; I desire you will say then, how you can possibly know that the present sheets are not shorter than those were?—I said, at the same time, that though it was a nominal thing that the sheets were to consist of five yards, yet I believe they never were of that quantity.

By how much were they shorter?—I cannot particularly say.

If you don't know by how much they were shorter, how can you possibly say, that you don't know that they are now shorter than they were then?—I never heard a complaint.

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That is not the question; you say, that from your knowledge, the hundred sheets you measured were the same length as those before; now you say, you don't know the exact length of those before; how then can you know that these are of the same measure?—I have measured them frequently formerly, when I was a clerk in the clerk of the cheque's office; and I have seen them measured since I have been in the present office, and since I have been clerk of the cheque myself. I have often seen them measured, and I don't know that there is any difference between those made formerly and those made now. *

When you measured the sheets formerly, of what length were they?—I believe short a quarter of a yard;* I have seen them so very often.

You said you measured them; you are to speak to a fact, not upon belief; have you taken any account of how much, upon an average, a certain quantity of sheets measured?—I have not; but it occurs to my memory that they have been a quarter of a yard in a sheet short formerly.

Have you measured any number of sheets latterly?—I have seen a great many measured lately.

Have you made any computation, and cast it into an average, to see how much they were short?—No; but I apprehend they were not more than that short; none that I have measured have been more than that short.

Are the committee to understand you, that when you say they are not shorter, it is from a general supposition, and not from any calculation or measurement?—I have seen a great many measured lately, and seldom any of them have exceeded that of being a quarter of a yard short.

Have you made any computation upon any number, to say that such a number produce so much, and upon an average they were so much shorter?—No, I have not.

Are the committee to understand you that you speak from conjecture, and not from measurement?—I have seen a great many measured.

Can you speak to any certain number that you have seen measured, that do all of them come within a quarter of a yard exactly, or nearly?—No; I have only seen here or there some measured when a quantity have been delivered in.

Then do you speak from your judgment of the measurement of one, or two, or three pair of sheets, but not from the measurement of any large number from whence you have made an average?—No; I have never measured any large number.

E. of Chesterfield. Whether the sheets are long enough for the beds?—I think they are.

* As there are four breadths in a pair of sheets, this makes a deficiency of 5,000 yards in so many pair, which are in the Hospital. *Orig. Edit.*

Do you know whether they are or not?—I say, I think they are.

In that ward particularly that captain Baillie complained of?—No; I speak of the whole house in general.

You say the sheets are nominally five yards; have you no pattern sheet to go by; what is the standard measure you go by?—I don't know that there is any pattern sheet.

Is there no standard to go by?—No; it has been looked upon to be five yards; it is a mere nominal thing that they should consist of five yards.

Do you understand a standard rule is to be a mere nominal thing, and never to be adhered to?—I speak, that it has been customary in the cutting up the cloth.

The standard is two yards and an half long?—Yes.

What length are the sheets now cutting up?—I really don't know.

Do you keep up to your standard of two yards and a half? Have you measured them?—I have not.

Have you measured none of them?—Not very lately.

How lately since you measured any?—It is a twelvemonth ago, I believe, since I measured any.

And are there none at this time making?—Yes, there are.

How came you not to measure them? Is it not in your office?—I have not been long in the office that I now enjoy; the first clerk in the office that I preside at has been 30 years in that employ, and I looked upon him to be a better judge than I am, with regard to all them matters.

Therefore you leave it to your clerk to do all that business?—Only some particular parts of it.

What length were those sheets when a complaint was made about them? Did you measure them then?—The sheets were not in the custody of any body, but were delivered out; they were in the infirmary, and as I understand, the late lieutenant-governor sent to the infirmary in an odd manner, and got those sheets and measured them; it was not known to any of the officers of the Hospital that those sheets were measured at all.

What was the measure of them then?—I don't know.

How much less than the standard?—I don't know that.

You were not then clerk of the cheque, I suppose?—I have been a long time at sea.

How long have you been clerk of the cheque?—Since May, 1776.

That was before this complaint, I understand?—Yes.

As it was in your office, you certainly measured them a year ago?—I saw a great number of them measured at the steward's office; they were measured there.

What did they measure a year ago? Did they come up to the standard of two yards

and a half in length?—I have said before, I have found them to be a quarter of a yard short of what is commonly esteemed the standard.

My question to you was this, what did they measure a year ago? You said you measured them a year ago. Did they come up to the standard of two yards and a half long, and five yards to the sheet, at that time?—No; I have told your lordships before, that several I measured a year ago were a quarter of a yard short, and I believe that was owing to the shrinking of the linen.

I understood that you were to measure those sheets before they were made up; we have just been told that was the time of measuring them, and not afterwards; when did you measure them?—After they were returned made.

And washed?—No.

Then how could they shrink so much?—It was after they were brought home made, and not washed.

And then they were a quarter of a yard short?—I observed several of them a quarter of a yard short, as I mentioned to your lordships before.

And did not you try to redress this because it came into your own office?—No; it has been the practice of the Hospital, as far as I can remember, and ever heard, with regard to the quantity of linen that each piece contained, that the sheets were calculated so as to cause the shortness now complained of.

Whether you have any reason to believe that the measurement that Mr. Field made was not a fair measurement?—I believe a fair one. [Mr. Maule withdrew.]

Captain *Baillie* called in again.

Whether you made any complaint at any time of the situation of the tailors' shop being such, as to be likely to occasion fire in Greenwich Hospital?—About last January was twelve months, there was a proposal from a tailor to take the Hospital contract, upon some information he had received that the contractor was in a bad state of health, and wished to decline; there was a circular letter sent, I believe, to all the directors of the Hospital upon that occasion; amongst the rest I had one, and some time after that a public letter appeared at the board from a contracting tailor, making a tender to the board in consequence of the information he had received of the ill state of health of the former contractor; the matter was then only talked of at the board of directors, for the former contractor had no intention it seemed to resign. I gave my opinion to the board of directors, that there was danger of fire from the tailors' shop in the Hospital, where I thought there was a scene of drunkenness and dissipation; the tailors were permitted to sell drams, and they kept a kind of suttlings-house in the Hospital; I pointed out the danger of fire, and when the committee sat in the Hospital to enquire into

the grounds of the several charges, they paid not the least attention to that matter, no more than they did to many others.

Whether you gave information to any set of men, that there was danger of fire from the practice of the tailors in the Hospital?—I mentioned it when the contractor made proposals; I objected then; I said I thought it an improper place for the tailors to work in; that there was danger from fire, saying, it would be a more eligible mode to buy the clothes ready made, and to serve them out as pursers do in his majesty's ships.

Did you object to the tailors working in the place they work in?—I did.

You represented that there was danger of fire from the tailors working where they did by candle light?—I did, to the board of directors, and pointed it out afterwards in my complaint.

Do you know any thing of the fire that lately happened in Greenwich Hospital?—I knew nothing of it till the morning I was going to London; at eight o'clock I heard there was a fire in Greenwich Hospital.

Is there any person here that can give an account where that fire began?—I should think it the duty of the captain and lieutenant of the week to know something about it.

Who were the captain and lieutenant of the week?—I was out of office then; I have heard that lieutenant Kerr was lieutenant of the week.

Why do you think that place particularly improper for the tailors to have worked in?—Because it is a great way from the officers to visit that ward, and it incumbered the Hospital very much, and took up the place of a great number of pensioners; I thought it would be better applied in having cabins for pensioners; that ward is not under the care of the officers; the steward has the direction and management of the tailors' shop, and it is scarcely ever visited by the officers of the Hospital; your lordships will find it was immediately over the chapel.

Was your objection to the danger of fire, because the tailors were not under the inspection of the officers?—That ward was always locked up at night; if the officers or guard go their rounds there, they can't get in; it is locked up, and the key is under the care of the steward and tailor, and these people.

I understood you objected to it, because the tailors sold drams, and kept a kind of suttlings-house?—I did not object to it particularly upon that account, because till after the fire I did not know that circumstance; it came out then.

What was the reason of your objecting to it at that time?—It was when the contracting tailor made an offer.

Why did you think it likely that fire should take place there?—Because it was never visited at nights by the guard of the Hospital; the patrol never visited it; they never could get into that ward.

Do you apprehend the fire began in the tailors' room?—I have every reason to believe so, from what has transpired in the Hospital.

Have you seen any of the examinations that were taken before sir John Fielding?—I never saw any of the examinations; but I have great reason to believe that neither the captain nor lieutenant of the week were called upon on that occasion; it seemed to me to be rather a partial enquiry.

It was upon oath, therefore what reason could you have for thinking so?—I did not hear that any body was examined upon oath; I was out of office, and I was not called upon; the captain and lieutenant of the week were the proper officers; the House will hear whether all the commissioned officers were examined or not.

Is that the only reason you have for thinking it a partial enquiry, that you have not heard they were examined upon oath?—I did not hear that the commissioned officers, whose duty it was to know something about it, were all examined.

Was that the only reason for your thinking it a partial enquiry?—I don't know of any other reason. [Captain Baillie withdrew.]

Lieutenant Kerr called in.

Inform the committee of what you know respecting the fire that happened in Greenwich Hospital. Do you know where it began?—Upon my word I am incapable to tell where it began. In the morning, about a quarter before five, when I happened to be in bed with my wife, and the Royal Charlotte ward is directly over me, which has a passage down from where the fire began, or near to it, I heard people running backward and forward; I thought it had been the boys running, as usual, at six in the morning to go to school; soon after I heard that the tailors' shop was on fire; I jumped out of bed, put on my clothes, and went up to the place, where I found a great deal of smoke in the Duke of York's ward; they told me there, that the tailors' shop was on fire; I went up close to it, and found a prodigious deal of smoke; I was asked by one of them if I had an hatchet; I ran down and brought up a broad axe to break the door; I gave it to a man, and then ran to get open the two great reservoirs of water, and I ordered the water to be thrown on the floor, hoping it was an accidental local fire in the ward; in about ten minutes after I found they had broke open a place on the left side of the steps going up to the tailors' shop; I looked down, and saw a small fire, not blazing up, but as if it had been continued for some time. They broke open the door. The boy and the man gave their evidence to sir John Fielding; how they gave their evidence, God only knows; they said—

The committee don't want to know what they said. What did you see?—What I saw was only that there was a fire at the left side of the steps a going up; when it broke

through, we could not get at the water; I gave the clerk of the cheque's clerk the axe to cut open the doors to get at the reservoirs of water; I went to the King's, the uppermost ward; then I went down to the Townsend; and then to the Prince of Wales's ward: captain Allwright went with me to see if there was any fire in the nurses' ward, or in the apartments that were under these apartments; there was none; I put my cheek to the side of the place, and said, here is the fire, I feel the heat strike to me: I ran up again to the wards above me and found the fire. To the best of my knowledge, and the judgment I can give of the affair, it was in the tailors' shop that the fire began.

Were you the officer of the week?—Yes.

To what extent did this fire go?—To a very unfortunate extent indeed; beyond the expectation of mankind; beyond what any man acquainted with Greenwich Hospital ever could conceive.

How many pensioners were burnt out?—I believe not above 300, or about 320 or 330; I can't ascertain the exact number; but I don't believe more than that.

Have you any guess of the extent of the damage, to what amount it will require to repair it?—I am no judge of any such thing.

Was there a great deal of furniture lost?—I don't know what furniture might be lost by the indiscretion of the people who were sent from the different yards; more damage was done than what the fire did; if they would have taken advice, there would not have been so much damage done; many wards were damaged that were not damaged by the fire.

Whether you did ever apprehend, or declare your apprehensions of a fear of fire in that particular part where the fire happened, before it did happen?—There was a man brought to the council; I being lieutenant of the week, our nurses complained to me that a man had a candle in his cabin; when I came to enquire into it, I found the man was guilty of the fault; he had no right, at any time, to have a candle in his cabin; the nurse took the candle out, and he struck her; the man made frivolous excuses to me; I insisted upon it that it should be brought to council: I sent down to captain Chads, who was the captain of the week, and bid him put it upon the list of the complaints; I said I would never forgive a candle's being in a cabin at an unusual time; the man came, and asked me to forgive it; I said if I did, I hoped God would never forgive me; it was brought to council, and he was punished; I wished him to have had three months, or two months at least, but he had only a month's punishment; I begged the council would give orders to the boat-swains to prevent the irregularity of the pensioners having lights in their cabins; for if any accident happened, I was afraid it would be from the Duke of York's ward, for they were irregular, drunken, turbulent, troublesome people; and this was all I did say; but

with no further intention, wishing the council would concur with what I had said.

If I understood you right, you said that before the fire happened, you were apprehensive that that was a likely part for a fire to happen in; and you had made a complaint; I wish to follow that question a little farther: who were the persons you made the complaint to?—It was in council I made the complaint.

Who composed that council?—It was the common council of the Hospital; I believe the lieutenant-governor and captain Lynn were there, and several captains; I cannot ascertain immediately that; but all my meaning was no more than wishing the concurrence of the council to support me in my duty as a lieutenant, having a large and extensive division under my care, that they would give an order, which would be more circumstantial than mine, as an individual officer; I neither meant, nor thought, nor wished no other.

Whether you were apprehensive that a fire might happen in that place, and made your complaint to the council? You named the lieutenant-governor as one of that council; was the apprehension of the fear of fire in that place suggested by you to the lieutenant-governor or by the lieutenant-governor to you?—I meant it in general, that I would wish to be supported, as I had given orders that there should be no lights; I meant no other, than that my orders should be enforced.

Were you ever examined by sir John Fielding?—I was.

You said that there were about 300 pensioners burnt out; how long was it before there were lodgings for them again?—I believe if the men would have come in, if they had not availed themselves of wishing to lie out, they might have been accommodated the very night the fire was: I believe I could have accommodated them myself, if I had been left to do it; and I believe every officer in the Hospital, to the utmost of their power, took every method to accommodate them.

You were examined, you say, before sir John Fielding?—Yes.

Did it appear, upon that examination, that the fire broke out first in the room where the tailors were?—I can only answer for what I said myself; I was not present; I believe it was very evident to every body, to the best of my knowledge, that it broke out there, and there only.

Who was the lieutenant-governor at the time you mentioned to the council your apprehensions of fire?—Lieutenant-governor Maplesden. [Lieutenant Kerr withdrew.]

Lieutenant Smith called in.

Were you at Greenwich Hospital at the time the fire began?—I was not; I was in town.

How soon were you at the Hospital?—I believe about noon; the damage was mostly over by the time I came.

Have you any reason to know where the

fire began?—As to forming any notion where it began, I certainly could not; though I did say (I don't know whether I have any foundation for it or not) that I imagined it broke out at the vestry.

[Lieutenant Smith withdrew.]

Tuesday, April 20.

Captain Baillie called in.

Whether you know anything of the method in which the linen is cut out in Greenwich Hospital?—Do you speak of sheets or shirts?

The sheeting.—A piece of sheeting is generally cut into sixteen lengths, to make eight sheets; each length ought to consist of two yards and an half; a piece of Russia sheeting generally contains thirty-seven yards and an half; that being cut into sixteen lengths, does not run to the standard of the Hospital; instead of sixteen lengths, it ought to be cut into fifteen only; by which means two pieces will make fifteen sheets; and by cutting four pieces in that manner, they will make exactly fifteen pair of sheets; instead of which the practice is, to cut four pieces into sixteen pair of sheets, by which means there is a pair of sheets more than there ought to be by the establishment. It has likewise been the practice of the butcher's servant to reduce each man's pound of meat to fourteen ounces, for which he was transported.

Whether the pieces of linen in general run thirty-seven yards and an half?—They are bought for thirty ells, that is exactly thirty-seven yards and an half; and if you search Cheapside, from one end to the other, I believe it will be found to be the length.

With regard to the men's shirts, whether they have been delivered according to the standard?—I believe not. Three yards and an half is the standard for every shirt in Greenwich Hospital. Throughout the Hospital, I will venture to say, they run but about three yards and a quarter; for the large men they generally allow three yards and three quarters. There is a gentleman I have seen here to-day, who is a draper, he can tell the exact length of the pieces.

What is his name?—His name is Price; I do not know his Christian name, for I never saw him before. [Captain Baillie withdrew.]

The duke of Richmond then moved, That the House be resumed; and a short debate ensued upon the propriety of Mr. Price giving evidence, as he had not been summoned.

Resolved, That Mr. Price might be admitted to give evidence. Mr. Price was therefore called, and sworn at the bar. The House being again resolved into a committee.

What is your name?—Edward Price.

Where do you live?—I live in Blackmoor-street, Clare-market.

Are you a linen-draper?—I am.

Do you deal in Russia linen?—I do.

What length are pieces of Russia sheeting, upon an average?—The fabric is thirty ells, or thirty-seven yards and an half each piece, seldom more or less. [Mr. Price withdrew.]

Capt. Baillie called in again.

Whether there were any proceedings against you, in Westminster-hall, for a libel?—There were six informations moved against me, in the court of King's-bench, for the Memorial I drew up of the state of Greenwich Hospital; it was in the name of the directors and others of Greenwich Hospital.

What were the names in which the informations were brought?—In the name of Mr. Hicks, the sixpenny receiver; Mr. Stuart, the surveyor of the Hospital; and the rev. Mr. Cooke, as directors. After that, my lords, they were consolidated into one or more informations; and there was the secretary, Mr. Ibbetson; the clerk of the works, Mr. Mylne; Mr. Stuart, the surveyor of the Hospital; and Mr. Godby, the steward; in their separate capacities.

Do you mean actions or informations?—Actions. They moved for rules, in the King's-bench, to shew cause why an information or informations should not be granted against me for a libel.

Is your solicitor here?—No.

Do you mean motions for informations or actions?—Motions for informations; it is my want of knowledge of the technical terms of the law made me express myself so.

Do you expect your attorney here to-day?—He has attended constantly till to-day.

Who carried on the business on the other side?—The solicitor of Greenwich Hospital, Mr. Everest. [Captain Baillie withdrew.]

Mr. Everest called in.

I beg to know whether you carried on any prosecution against Mr. Baillie, in Westminster-hall?—Yes.

Of what nature; and at whose suit?—I was employed by several individuals at the Hospital to prosecute captain Baillie for a libel; they were, Mr. Hicks, Mr. Stuart, Mr. Ibbetson, Mr. Mylne, and Mr. Godby, on their separate and private accounts: it was some time before I received any farther orders; I think, at last, the committee of enquiry on captain Baillie's book, called me in, and I received orders from the directors to take the necessary steps, on their part, to prosecute captain Baillie.

When you were called in by this committee, did they direct you to prosecute captain Baillie in their name, as a committee, or as a court of directors, or a general court?—I understood I was to take the necessary steps on the part of the directors; the necessary affidavits were prepared, and the rule made, to shew cause why informations should not be filed.

In the name of any person, individually, or by the court of directors?—I first received

orders from individuals, and then at the committee of enquiry.

When you did move to shew cause, did you do it in the name of any person, individually, or on the part of the board of directors?—One in the name of the court of directors; the others on the part of the individuals I have mentioned. The rule was, why an information or informations should not be filed; I believe an information only was intended to be supported.

At whose expence was that carried on?—The expence has not been paid; captain Baillie's expences have been paid out of the pocket of Mr. Stuart, Mr. Hicks, Mr. Godby, and Mr. Cooke, &c.

Your part of the business, at whose expence was that carried on?—I conceive that I am to be paid by the individuals that employed me.

Was there any thing about who was to pay it?—I wrote to the board of directors, the 17th of October, I think it was. I was called upon, and asked if I looked to the Hospital for payment; I was told I was not to look to the Hospital for payment, but to the individuals that employed me.

[Mr. Everest withdrew.]

Mr. Lefevre called in.

I beg he may be asked, whether he knows any thing of prosecutions carried on against Mr. Baillie, or any steps taken to engage persons to carry on those prosecutions?—I will begin, if your lordships please, and relate the whole. About the 8th or 9th of January, I was in company with the Rev. Mr. Cooke, who read to me a part of a letter he said he had received from the steward of the Hospital, the contents were, That the contracting butchers were cast for the several frauds they had been accused of at Guildhall; and after the trial was over, the said steward, and the rest of his friends, which I suppose were the landmen, enjoyed themselves with a very good dinner, and a bottle of good wine, while the lieutenant governor and his party sneaked off like a parcel of dirty dogs.

Here a short conversation took place, whether the witness should be permitted to proceed in his narrative, or answer to such questions as might be propounded. Agreed, that he should confine himself to answers only. Witness called in.

I desire Mr. Lefevre will answer what he knows relating to steps taken to induce persons to bring about these prosecutions against captain Baillie?—As to what could induce them, it is impossible for me to say.

If Mr. Lefevre will be so good as to answer what steps he is acquainted with which were taken to induce any gentlemen to prosecute captain Baillie?—I should suppose they did it merely from dislike to captain Baillie.

Had you any conversations with Mr. Cooke, relative to any prosecutions against captain

Baillie?—I was going to that; I was going to mention it as it was told me by the Rev. Mr. Cooke; I was going to relate from the beginning of Mr. Cooke's discourse to the end.

The only thing wanted is, that you will relate that part that concerns an attempt to induce any body to prosecute captain Baillie?—I recollect, after captain Baillie's book came out, Mr. Cooke informed me, that lord Sandwich had said, that any person that should be seen to keep company with captain Baillie, should have a stop put to his preferment for ever.

[Mr. Lefevre interrupted by several noble lords, and ordered to withdraw.]

While the witness, Mr. Lefevre, was giving his testimony, lord Denbigh, who sat just within the bar, near the witness, said, in a low voice, two or three times to him, that he should confine himself to the question; if he did not, he must interrupt him. The witness not attending immediately to what his lordship said, he rose to object to receiving any kind of evidence, but what contained an answer to the question put by the House.

The Duke of *Richmond* rose to complain of the very disorderly conduct of the noble lord, who went down to the bar, and endeavoured to intimidate a witness delivering his testimony upon oath.

The Earl of *Denbigh* acknowledged, that he told the witness that he would interrupt him, if he deviated from the question.

The Duke of *Richmond* replied, that it was highly improper and indecent, to offer to direct a witness, and intimidate him, by holding a private conversation with him; that no noble lord had a right to put a question, as an individual, to any person under examination at the bar; and, if the noble lord did not desist, and immediately retract, he would, for the honour of the House, and the order and decency of their lordships' proceedings, frame a question, and take the sense of the House upon it.

After a warm altercation between the two noble lords, and several direct contradictions, in which the duke of *Richmond* affirmed positively, that the noble lord had endeavoured to intimidate the witness; and, from what he said in his defence, had confessed the disorderly conduct imputed to him,

The Lord Chancellor rose, and said it was very true, that every question should come through the medium of the chair; that that form was, however, frequently dispensed with, for the greater dispatch of business; but if the noble duke insisted upon adhering to strict order, he was certainly right.

The Earl of *Denbigh* said, that was what he meant to do; that it was permitted every day; and that so far from intimidating, he only wished to prevent trouble.

The Duke of *Richmond* replied, the question stated by the noble and learned lord, and the noble earl who spoke last, was very different

to the species of disorder he complained of. When a noble lord propounds a question, in the manner described, he did it openly, and with an audible voice, so that every lord present might hear it. It was never therefore imagined, that because the question was directly answered from the bar, that, dispensing with the right orders of the House, in not insisting to have the question again repeated from the chair, or the woolsack, left any noble lord at liberty to go down to the bar, to hold a private conversation with a witness, in order to intimidate him.

The Earl of *Chesterfield* said, that the present being an enquiry into the conduct of the noble lord, whose name was mentioned having made use of such an expression, that hearsay was no evidence, and that consequently it was inadmissible, and the witness ought to be restrained from mentioning lord Sandwich's name.

Here a very warm debate commenced on two grounds. First, whether the present enquiry could be properly considered as an enquiry into the conduct of lord Sandwich; and if it could, whether hearsay evidence of what the witness heard Cooke say that lord Sandwich told him, was admissible evidence in a court of justice.

The first of those questions was debated for upwards of an hour. The affirmative was contended for by the Lord Chancellor, and the lords Mansfield, Bathurst, Chesterfield, and Dudley; the negative, by the duke of *Richmond* and lord Camden, mixed with their question of fact, and the general supposed understanding of the House, the question of the law forced itself into discussion. At length lord Mansfield framed a question, in order, he said, to take the sense of the House to the following effect:

"That it be resolved, that the name of John earl Sandwich be not mentioned by the witness at the bar, in his evidence of a conversation with any other person, of what the said person informed him that the said earl had said." To which the duke of *Richmond* moved an amendment, by adding the words, "in order to intimidate said witness."

As soon as this motion was handed to the table, a new and most important debate recommenced.

The Earl of *Mansfield* contended, that it was repugnant to every principle of law, to admit evidence upon hearsay, which, in its consequences, might affect a third person; that certainly, though he did not consider the present enquiry to be specifically directed against lord Sandwich, yet only considering him as one person charged among many others, it was well known that in proceedings upon indictments, where several persons were included in it, no evidence of a criminal act of any one of the parties was ever received as evidence against another. Lord Sandwich and Mr. Cooke stood in exactly the same predicament of persons so indicted, conse-

quently nothing that Cooke said ought to be admitted as evidence against lord Sandwich.

Lord Camden acknowledged the principle laid down by the learned lord; but taking up the matter upon the noble lord's own ground, allowing that lord Sandwich and Mr. Cooke were before the House in the character of criminals, the learned lord must acknowledge that they were not trying for the same offence, nor were their cases at all alike. Mr. Cooke might be convicted of the charge now made, would that affect lord Sandwich? God forbid! What Cooke said, was no evidence against lord Sandwich, or any person on earth but himself. Suppose lord Sandwich never made use of any such expression, which he hoped and believed might turn out to be the truth, would it not be cruel to condemn the noble lord, not for what he said, but merely because another person had slandered him; the very slander was an act of a criminal nature against the honour and character of the noble lord, and was little connected in one point of view with the present enquiry. In another, so far to be sure as those discourses tended to intimidate and prevent reformation and justice, they might furnish just grounds of further proceeding against Cooke. But he would meet the noble lord fairly upon the point of law and analogy to the proceedings on indictments, which he seemed so much to rely upon. Lord Sandwich might appear to have been guilty of certain acts of mismanagement, as first commissioner of the Admiralty, in the exercise of directing the affairs of the Hospital, or of none. So might Mr. Cooke, as improperly interfering, and by abusing his function, or he might not. One of them might be proved innocent, and not the other, consequently the case stated by the learned lord did not apply. But he would put a case to the learned lord, which must apply. Supposing that several persons had been included in the same indictment, for several specific offences, might not evidence be competently given and received of a specific criminal act, committed by one of the parties, though it amounted to hearsay only respecting another charged with a different species of offence? Most certainly; the learned lord knew it would not serve to convict that other person of another offence, because hearsay was no evidence, and could only be admissible against the party on whom the offence was charged.

The Lord Chancellor made two or three very long speeches in the above debate, in which he chiefly laboured to establish the two following propositions:

That the enquiry amounted to a specific charge against lord Sandwich; and if taken as a general charge against all those concerned in the management of Greenwich Hospital, every particular part of it applied generally against every person concerned; consequently, whether the enquiry was general or individually directed, the evidence was indivisible; that is, every part of the testimony given at

the bar, was evidence of misconduct of lord Sandwich; or if it was not, it affected him as one of the parties accused.

[His lordship's pardon is asked, if his meaning be here mis-stated or mis-conceived; for there is every rational ground to suppose such doctrine diametrically opposite to the whole code of English jurisprudence, and consequently foreign from the noble lord's sentiments.]

To prove his first proposition, he quoted capt. Baillie's book on the table, which charged lord Sandwich, in direct terms, with corruption. To prove the second, he presumed that the permitting those mismanagements to continue, amounted to a failure of duty, in not putting a stop to them; and of course, if proved, would ultimately reach the noble lord.

The Earl of Sandwich said, he had been charged with corruption; that he looked upon the enquiry as totally personal against him; that he wished the witness might be permitted to proceed, because he was conscious of the injustice and falsity of the charge; but he should be sorry that any convenience or desire of his should be preferred to the order and established mode of proceeding in that House.

Lord Camden again rose, and in a most able, correct, and learned speech, answered every thing material which had been urged on the other side. He said, the present motion, if carried, would amount to a real dissolution of the Committee, even upon the arguments of the noble lords who framed and supported it. The present, say the noble lords, is an enquiry into the conduct of the earl of Sandwich, charging him with manifest corruption in the exercise of a public trust of very great consequence. What will be the manifest effect of this motion? that you may sit here till the dog-days, to hear the examination of witnesses, to hear complaints and charges made against any person, or every person, but the conduct of the noble lord into which you are convened to enquire. I only repeat this, to shew the manifest absurdities people are drove to adopt, when they want to effect purposes upon principles which directly make against them; for I am perfectly satisfied that the present enquiry contains no single specific charge against any man, so as to produce conviction or condemnation. The event of it, I acknowledge, may afford matter proper to found a criminal proceeding upon; but in the first instance, I affirm as a member of this House, and a lawyer, that it cannot produce any issue, which may immediately affect either the noble lord or any other of the parties.

But even if it did, I will follow that assertion with another, that evidence of what another person said that lord Sandwich said, can never reach nor affect that noble lord in the most distant degree. It is but hearsay evidence at the best. It can only affect Mr.

Cooke, if not disproved; and if ten or ten hundred witnesses, one after another, came to your lordships' bar, to confirm the testimony of what Mr. Lefevre heard Mr. Cooke say that lord Sandwich had told him, it would, it could not weigh a feather with your lordships. If it could not, the conclusion is direct and inevitable, that the mentioning lord Sandwich's name, as it cannot affect in the most remote degree that noble lord, so it is absolutely necessary that his lordship's name should be mentioned, as directly and circumstantially necessary to prove the means of intimidation made use of by Cooke, to deter the witness from shewing any countenance to capt. Baillie. Once for all, I say, truth and justice oblige your lordships to believe the noble lord innocent of the expressions imputed to him; you are bound as judges to believe his lordship innocent, till you have received proof to the contrary, and heard his defence; and having no proof to the contrary, from the evidence objected to, you have no right whatever to refuse a species of evidence, totally applicable and exclusively to another person, which will certainly be the case should the present motion be carried.

The question was put, and carried by a majority of 46 to 10.

The Duke of *Richmond* moved, that the resolution now carried, be read and delivered to the witness, that he be informed, that he may answer any question, so that he does not mention the name of the earl of Sandwich.

This was strongly opposed, as unnecessary and unprecedented; the reading of the motion was sufficient, and no instance was ever known of a witness at the bar being permitted to have any of the proceedings of the House in his possession. A very interesting debate ensued, and the noble duke's motion was negatived by a majority of 44 to 15.

[Witness called in, and the two last questions and answers read.]

Clerk reads.

"Had you any conversation with the rev. Mr. Cooke, relative to any prosecutions against capt. Baillie?"—I was going to that; I was going to mention it, as it was told me by the rev. Mr. Cooke; I was going to relate from the beginning of Mr. Cooke's discourse to the end.

"The only thing wanted is, that you will relate that part that concerns an attempt to induce any body to prosecute capt. Baillie?"—I recollect after capt. Baillie's book came out, Mr. Cooke informed me that my lord Sandwich had said, that any person that should be seen to keep company with captain Baillie, should have a stop put to his preferment for ever.

The following Resolution was also read to the witness.

"That it be resolved, that the name of John Earl of Sandwich be not mentioned by

the witness at the bar, in his evidence of a conversation with any other person, of what the said person informed him, that the said earl had said, in order to intimidate the said witness."

That Mr. Lefevre may be told, that if any questions are asked him which he cannot answer without going contrary to that resolution, he must not make any answer.

Whether he received any intimidations from any person relative to giving support to capt. Baillie?—A number, my lords; I may say numberless.

From whom?—From the rev. Mr. Cooke.

What were those intimidations?—Frequently he told me, if I was to be seen in company with capt. Baillie, or had any correspondence with him, an end would be put to my preferment. I was going out lieutenant in the America; he came to my house and said to me, I find you keep company with capt. Baillie, and he swore by his Maker, there would be an end put to my preferment if I did not desist.

What were the words he made use of?—By God your preferment will be stopt, if you persist any longer.

Did any conversation pass between Mr. Cooke and you, relative to any encouragement from Mr. Cooke, to any person to prosecute capt. Baillie?—No encouragement to prosecute him, only to have nothing at all to do with him.

Did you hear him make use of such expressions of intimidation to any others?—To my father, who was then a dying man; my father told capt. Baillie there was mischief against him, and bid him be on his guard.

Did your father belong to the Hospital?—He did.

You were intimidated several times?—Frequently.

By any other person than Mr. Cooke?—No others.

When was the last time he made one of these declarations?—April, 1778.

When did you relate this conversation?—To my father immediately.

When to other people?—Some part of the conversation long before to captain Baillie; this I spoke of particularly before the ship sailed.

When did you make this conversation of Mr. Cooke's public?—Immediately.

To whom?—Captain Baillie and my father.

Any body else?—I cannot recollect any body else.

Had you any employment in the Hospital?—None.

How were you intimidated?—I was a lieutenant in the navy.

You said, Mr. Cooke told you your promotion would be stopt?—He did.

Did he say in what manner it would be stopped?—He said an entire stop would be put to my preferment, and that it would be the entire ruin of my father and family, if I

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was ever seen to keep company with captain Baillie, or to correspond with him.

How was a stop to be put to your preferment?—By my remaining a lieutenant as I was, I suppose.

Did Mr. Cooke say he had any authority for saying, any person would be marked that conversed with capt. Baillie?—He did say he had authority for saying so.

I desire he may be asked what authority he had for saying so?—He told me he had it from a nobleman high in office.

What nobleman? [Ordered to withdraw.]

Here a very warm debate ensued: The Earl of Sandwich said, he wished most heartily that the resolution had not been made; and if there was any way of getting rid of it, he should be extremely glad to do it. He complained greatly of the conduct of noble lords on the other side, who, in order to harass and tire the House, started debates upon every trifling occasion. They wished, he said, to put the enquiry off till the very close of the session, to preclude him from a defence; and lamented, that the enquiry had not at the beginning been so constituted, as to have admitted him to make his defence to every different species of charge, as they were brought forward.

The Duke of Richmond disclaimed any intention of procrastination or delay; observed, that it was not a pleasant task on his part: that the charge of delay lay much more justly against the noble earl and his friends, than on those at his side of the House; he acknowledged indeed, that he had fortunately laid a temptation, which they had caught at; and that they now found they were in a situation from which they could not extricate themselves; that the noble lord's affected sorrow might easily be accounted for; he voted for the question, on the division, when he might have prevented it; he now lamented that it had ever passed, and recommended to have it rescinded, or dispensed with, when he knew, by the orders of the House, that it was totally impracticable. His grace spoke for some time in this strain, and was very severe on the noble earl. A very considerable pause now ensued, several methods were proposed to get rid of the difficulty; the witness was at length called in.

Asked, Who was the nobleman mentioned by Mr. Cooke?—Am. I to mention the nobleman's name?

He must read the resolution.—That deprives me.

Whether he may name the noble lord or not? (The Resolution read to the witness.) You are to answer what nobleman?—I should be sorry to fall under any censure of the House, but that resolution entirely prevents me from mentioning the nobleman.

Will you be so good as to tell the House what other intimidations passed from Mr. Cooke to you, or whether you took any op-

portunity of complaining to any person when you was so intimidated?—Last May I made it my business to go to the Admiralty; I went four mornings with intent to see a noble lord, to tell him of Mr. Cooke's behaviour; I could not see that noble lord; I was denied him frequently, and told that the noble lord would see nobody. I went the next morning into the captains' room, the servant was desired to go up to the noble lord, but I could not see him that morning; I went then to endeavour to see Mr. Stephens two or three mornings, and waited from two or three o'clock till after five, but could not see Mr. Stephens.

Did any thing pass between you and Mr. Cooke, about these affairs coming into parliament?—Yes, about the middle of June, 1777, I spoke to Mr. Cooke about his speaking something disrespectful of the lieutenant-governor; I said these affairs might come into parliament; he seemed to catch at that, and said, a noble lord would take care and put captain Baillie out of his office before that should be.

Whether he is to name that noble lord?—I am not at liberty to mention that.

Did he mention what noble lord would put him out of his office?—He did mention him.

I desire he may answer who it was?—Have I a right to answer while that resolution is in being?

Not against the resolution; I wish Mr. Lefevre would be correct in repeating to the House, the substance of what passed between Mr. Cooke and him about turning captain Baillie out, rather than it should come before parliament?—As I mentioned before, in the middle of June, 1777, as we were talking of the affairs of Greenwich Hospital, he took occasion to mention captain Baillie's name; I bid him desist; I said perhaps the affairs of Greenwich Hospital might come into parliament; he seemed to catch at that, and said, a noble lord would take care he should not do that, he should be turned out of his office first.

Did any thing more pass between you and him on that particular subject?—Not on that particular subject.

Did any thing else pass, on any other subject, relating to Greenwich Hospital?—I was summoned before the committee at Greenwich Hospital; Mr. Cooke stood up and insisted upon it that I should not say one word; and Mr. Barker, the chairman, I believe, bid me go out, and said that I should not say a word.

Did any thing pass relative to any other matter of Greenwich Hospital?—No other in particular.

Are you a lieutenant in the service?—I am not.

When did you leave the service?—Last May; I quitted it entirely from the threats I received from Mr. Cooke.

What threats?—That a stop should be put to my promotion, because I spoke to captain

Baillie; I said I did not know that I had acted wrong in any particular, and therefore I should quit the service.

How high were you in the list of lieutenants?—I believe there might be 2 or 300 under me.

What time were you made a lieutenant?—October, 1775.

When did you quit?—November, 1778.

Whether is it common to promote lieutenants, unless they merit it by their own gallantry?—I never said I expected preferment; nor did I expect to meet with it, from what was told me.

Earl of Sandwich. Whether you recollect a conversation between you and me at Portsmouth? And whether you did not apply further?—Yes, I did; to know whether what Mr. Cooke told me was true or no; and I thought, from what your lordship said, it was true.

Whether your quitting the service was not an act of your own?—It was; from the threats of Mr. Cooke, and the answer I received from your lordship.

Whether you were ever threatened by me?—I never said I was threatened by your lordship.

When you met the noble lord, what preferment did you ask for?—Not any in particular; I believe I asked him to consider me, if any preferment was going forward, and if I was to expect any further preferment from the noble lord.

How long had you been a lieutenant when Mr. Cooke said a stop should be put to your preferment?—I had been a lieutenant two years and a half.

Should you have thought of quitting the service, when you had been two years and a half, if you had not been told that you should meet with no preferment?—No, I should not; I loved the service.

You were made a lieutenant in 1775?—Yes.

And you quitted in November, 1778?—Not quitted the service, only on half-pay.

In October, 1776, you met lord Sandwich?—No, I did not mention that time; I said when his lordship was at Portsmouth; that was last year, that has nothing to do with 1775, or 1776.

You said, from the conversation between you and lord Sandwich at Portsmouth, you believed that what Mr. Cooke said was true, that a stop should be put to your preferment; give an account of that conversation?—I asked his lordship, if I was to expect any further preferment; his lordship, for a long time, made no answer at all; at last, I think, his lordship said, that he had a good opinion of me, but that if I stood there from that time to that time twelvemonths, I should get nothing out of him.

Was that all he said to you?—Yes; that I might expect no other answer.

You say, that the only thing that lord Sand-

wich said to you was, that he had a very good opinion of you, but that if you stood there from that time to that time twelvemonths, you should get nothing out of him; how did you understand from that, that he did not mean to prefer you?—From the very great indifference with which it fell from him. One circumstance I forgot to mention; prior to this discourse, early in the morning, I went on board of the yacht, his lordship turned his back on me, and went down into the cabin immediately; this was the same morning, before my conversation with lord Sandwich. I went on board the America, told my captain of it, and mentioned Mr. Cooke's conversation; and he said, did I not tell you, that that man would not do you, or any body else, any good.

How long might it be after you asked the question, before his lordship made any answer at all?—I believe some minutes; for I followed my lord from sir Thomas Pye's house, a good way down Portsmouth.

How long was it?—I believe a quarter of an hour, at least.

Whether you solicited the First Lord of the Admiralty frequently before this?—Several times; I suppose three months before.

What was your father?—A lieutenant in the Hospital.

One of the complainants with captain Baillie?—I believe he was; I have heard him say he should certainly assist captain Baillie, that he believed he was an honest man.

Had you received any answer from lord Sandwich?—Yes; he said I was a very young officer, he wished me success. I told it to my friends, and they said there was no hopes of my being preferred.

When was your first application?—My first application was before I was lieutenant of the America.

After you were lieutenant?—December, 1777.

What answer did you get then?—Rather a flattering one.

When was this answer, that you were a young officer, and he wished you success?—I believe it was in February, 1778.

It was since that, that you saw lord Sandwich at Portsmouth?—Yes.

Since that, you have made no application at all?—None.

What ship were you in at that time?—The America.

Who was commander?—Lord Longford.

A man may have been a young lieutenant, and have been a long time at sea; what age are you?—Thirty-two.

How long have you been at sea?—Twenty-two years; I went to sea when I was ten years of age.

When did that conversation pass between you and lord Sandwich, at Portsmouth?—I believe in last May.

When was the conversation with Mr. Cooke?—Between February and April, 1778.

In May, you saw lord Sandwich at Portsmouth?—Yes.

How many lieutenants stood on the list when you applied to lord Sandwich?—Many; perhaps 7 or 800; or perhaps 1,000.

Though you had been so long at sea, would you have felt any sort of inclination to have quitted, supposing you had thought you were in a likely way to have the chance with other people for your preferment?—I never should; other people know I never should; it was an employment that I loved.

[Mr. Lefevre ordered to withdraw.]

The House adjourned to the next day.

Wednesday, April 21.

Captain Baillie called in.

What proceeding he took in consequence of his book; and what persons he laid the complaints of Greenwich Hospital before?—Does your lordship mean in regard to the printed Case of Greenwich Hospital?

Yes.—When I had prepared the printed Case, I thought it prudent, first to lay it before the First Lord of the Admiralty, hoping that he would pay some attention to the complaints in that book, as it is called; I think that was on the 7th of March twelvemonth. It lay with his lordship nine or ten days before I attempted to make any further application; then I waited in person on the First Lord of the Admiralty, hoping he would give me some satisfaction, and redress the grievances complained of. He did not pay that attention to them that I expected; he said he had received a particular letter from me; I told his lordship it was on a particular occasion; and asked his commands upon it; he said he had no commands upon it; I thought an examination was likely to take place, sir Hugh Palliser and Mr. Stephens being present; and, as I had no witness, I made a bow, and came away. I have a copy of that letter.

Is it not on the table?—No; it is the letter said to be lost, and not produceable by the noble lord to whom it was addressed. I thought it prudent to lay it privately before his lordship first: I beg the permission of the House to have that letter read.

Clerk reads the following letter:

“To the Right Honourable the Earl of Sandwich; addressed on his Majesty’s service.

“Royal Hospital, March 7th, 1778.

“As your lordship has hitherto been disposed to hear only one side of the affairs of Greenwich Hospital, I take the liberty to inclose, for your lordship’s consideration, a state of facts, which, I trust, will stimulate your lordship to redress the grievances therein complained of; and thereby restore me to my proper command in the Hospital, of which I have been deprived by a combination of landmen, who, if they had any right to a footing in the Hospital, can have no pretence to per-

vert and depose the lawful government thereof.

“I have the honour to acquaint your lordship, that I will not sit down contented to see the men cheated, and myself insulted, by priests, clerks, or contractors. I think it, however my duty to forewarn your lordship, that if you are any longer deaf to reasonable complaints, I shall put this effort for redress into execution; which I should have deferred for a more seasonable opportunity, but the recent overbearing conduct of the faction so frequently alluded to, in the inclosed Case, has compelled me to struggle for immediate redress.

“I would not have your lordship understand, that I mean to disturb government at this critical time, by applying to parliament; I scorn the imputation of making any other appeal than to the body of the commissioners and governors of the Hospital, whose bounden duty it is to hear and redress the grievances complained of; and I most sincerely lament that an establishment, so truly popular and great, should be so far perverted as to force me to make any appeal.

“I am, my lord, your lordship’s most obedient, and most humble servant,

“THOMAS BAILLIE.”

Give an account of what steps were taken in consequence of this?—In consequence of that letter and printed Case, instead of any examination into the affairs of Greenwich Hospital, there was a complaint set on foot against me: a number of the officers were encouraged to complain of it; I did not know that I had given any cause of complaint against me. The printed Case was brought down to Greenwich Hospital; otherwise I should have waited longer for his lordship’s indulgence than ten days; perhaps a month, or perhaps till now. The rev. Mr. Cooke set on foot a complaint against me; and went about among the officers, as if he had been canvassing for votes at an election: the majority of the naval officers did not complain; nor was any complaint made an act of the council of the house; it was rather a kind of conspiracy; I don’t know what to call it. Another complaint was set on foot against captain Baillie at the board of directors that met with more success; that was sent in form to the lords of the Admiralty. The clerk of the works, and the civil officers of Greenwich Hospital, also complained, who were accused themselves: nor was this an act of the council, which is usual when any complaint is presented to the board of Admiralty. The governor did not sign any complaint against captain Baillie, as governor, but as a director only. In consequence of these complaints, a general court was held in April; but instead of a court of the noble persons that constitute a great part of that body, there was a sort of a puisne general court convened, in order to have it submitted to them, what should be done respecting the book. That it was not such a general court as I had wished;

that Mr. Ibbetson had once, on his own suggestion, summoned a full general court, to elect a new steward to the Hospital; I humbly conceive it was of more consequence to enquire whether the finest and noblest charity in the world was well or ill managed; abused or not abused; was a matter of infinitely more importance than the election of a steward to the Hospital; and therefore I hoped, that as much pains would be taken to assemble an impartial general court, to take the Case, stating such a variety of criminal charges, into consideration, as had evidently been bestowed on the former occasion. That on the 14th of April, 1778, the general court, consisting of six lords of the Admiralty, Mr. Stephens, their secretary, the governor of the Hospital, three commissioners of the navy, the lieutenant-governor (captain Baillie), and thirteen directors, met. The first lord of the Admiralty was pleased to say, when the complaints were read, at this court, against captain Baillie, if he would name a committee of directors out of the number present, he should choose his men. I objected to the directors, because they had complained of me, and were impeached by me; I therefore thought it an improper tribunal to try me, or themselves, who were the very persons I had accused. I objected to these directors sitting in judgment upon their own conduct. Lord Sandwich, however, thought it a proper tribunal to examine into the affairs of Greenwich Hospital. His lordship desired me to object to any of them. I thought, as they had turned the tables upon me, none of them were proper persons to sit on the enquiry. They were, however, constituted a committee; and they sat seven days. The whole of their proceedings was partial, arbitrary, and unjust.

Give an account of what happened at that court. What day was the general court of enquiry ordered?—I believe, the 14th of April, 1778. The resolution of the general court is among the papers on your lordships' table.

Mr. Ibbetson called in.

(Reads the following Resolution.)

“At a general court of the commissioners and governors of Greenwich Hospital, which was held at the Admiralty, on Tuesday, April 14, 1778.

“Present, right hon. earl of Sandwich, John Buller, esq. lord Charles Spencer, right hon. earl of Lisburne, sir Hugh Palliser, right hon. lord Mulgrave, lords of the Admiralty; Philip Stephens, esq. secretary to ditto.—Director, sir Charles Hardy, admiral of the white; Directors, George Marsh, esq. Timothy Brett, esq. sir Rich. Temple, bart. commissioners of the navy.—Captain Baillie, lieutenant-governor, sir Merrick Burrell, bart. Z. P. Fonnereau, esq. James Stuart, esq. John Cleveland, esq. Peregrine Cust, esq. T. T. Savary, esq. Thomas Hicks, esq. John Barker, esq. William Wells, esq. rev. Mr. Cooke, Joah Bates,

esq. sir Richard Bickerton, William Reynolds, esq. directors.

“The Earl of Sandwich informed the court, that he had called them together in order to lay before them a letter, which the secretary of the Admiralty had received from captain Baillie, lieutenant governor of Greenwich Hospital, dated the 26th of last month; together with a printed book, which accompanied it, entitled, “The Case of the Royal Hospital for Seamen,” &c. as also several applications from the board of directors, the officers of the council, the principal civil officers, and great numbers of the clerks, &c. who conceive themselves greatly traduced and injured by the charges contained in the said book, desiring redress; all which papers were read; and Mr. Brett and Mr. Barker, two of the directors who were not present when the application from that board was signed, declared their full concurrence in every thing set forth therein. And the secretary read to the court a letter which he had received from Mr. Eden, another of the directors, representing, that it would not be in his power to attend the present meeting to-day, as he was to leave London yesterday; but that having read captain Baillie's performance, he was satisfied that it was improper and unwarrantable in every respect, and that he should be very glad to hear that the general court was disposed to proceed accordingly.

“Captain Baillie, who was present, acknowledged himself to be the author of the above-mentioned Case; at the same time insisting that it was not a book but a memorial.

“Great part of the said Case was then read; particularly such part of it as more immediately reflected upon the proceedings of the directors and their secretary.

“Mr. Cust then moved, that a committee might be appointed to investigate the grounds of the charges contained in the said printed book; and the court being of opinion that it would be a very proper measure, captain Baillie was desired to name seven of the most independent directors to form a committee for that purpose, which he declined. Lord Sandwich then took a list of the directors, and having put down the names of the following gentlemen, viz. sir Merrick Burrell, Mr. Fonnereau, Mr. Cust, Mr. Savary, Mr. Barker, Mr. Wells, Mr. James, and Mr. Reynolds; captain Baillie was asked, if he had any objection to them, or to any of them; to which he declined giving any other answer, than that he disapproved of the mode.

“It was then resolved, ‘That the above-mentioned gentlemen, except Mr. Fonnereau, who desired to be excused on account of his ill health, should be a committee (of whom three to be a quorum) to investigate the grounds of the several charges contained in the above-mentioned book; and they were desired to proceed upon that business with all convenient dispatch, at such times and places, as they should think most proper for the pur-

pose; and when they had completed such investigation, to let the lords of the Admiralty know it, that another general court might be called to receive their report.'"—Adjourned.

It appears by the directions given to the committee, that they were to investigate the grounds of the several charges contained in captain Baillie's book?—Yes.

Are there any directions in the order, to enquire into the complaints against captain Baillie?—That is all that appears.

Captain Baillie again.

Give an account of what you know of the proceedings of that court of enquiry, appointed to investigate the grounds of the complaints.—It was a most complicated business; it is impossible to remember the whole of it; it was the course of seven days examination. First, they came down with a special pleader, a counsel at law, which I thought not necessary on an enquiry into the management of Greenwich Hospital; I had no idea that a counsel was to be employed against me, or the pensioners. This gentleman brow-beat me, he brow-beat the evidences; he drew out the charges, by taking a chain of sentences, bits of lines, and scraps of paragraphs, out of my book. I was brow-beat; I was called a blackguard by the clerk of the works, and a liar by the Rev. Mr. Cooke. I beg to refer to my letter to the general court of governors and commissioners, in which is a particular account of all or most of the transactions of the committee; it is dated the 12th of August, and lays on your lordships' table.

You understand, it is expected that you are to swear to the truth of the contents of the letter?—If there is the smallest circumstance that I cannot swear to, before your lordships and before God, I will point it out. First of all, a respectable officer of Greenwich Hospital, lieutenant Gordon, as soon as he had given his evidence, he was told by Mr. Morgan, because he did not approve of his evidence, That he might go to the devil; he is an officer that had both his legs broke in the service.

Did this committee reprove Mr. Morgan for so doing?—Not in the least; after lieutenant Smith had given his evidence, Mr. Morgan said, Your evidence is a libel, Sir. This terrified the officers; they thought they should be brought into the predicament that I was. I beg to read my letter of the 12th of August, to the general court of governors and commissioners. My lords, I beg leave to add, that this gentleman (the short-hand writer) whom I did not expect to see here; on the first day of the enquiry I saw a great deal of foul play; I thought the proceedings were not to be warranted; I sent for this person to take minutes on the second day; I had him at a side-table; I told Mr. Cust that he was a person I had introduced to take minutes by his leave; he asked him who he was; he said he was a

short-hand writer brought there by captain Baillie to take notes; upon which Mr. Cust said, Then Mr. Short-hand writer please to walk out; and he was turned out in that abrupt manner. I believe the gentleman was frightened, and thought he was going to be beat. Here is an expression in this letter, I beg leave to mention before I declare it upon oath; I understood, at a preceding general court, that lord Sandwich said none were summoned to the court but whom he thought proper; when I objected to the court, to the best of my belief, he said, "A general court is not such as you choose to petition for, but such as I think proper to direct;" which being contradicted by several persons of character and reputation, I don't wish to give it in evidence, though I have it on my minutes exactly as it stands in my letter.

Captain Baillie reads the following Letter as evidence:

"To the GOVERNORS and COMMISSIONERS of his Majesty's Royal Hospital for Seamen at Greenwich.

"My lords and gentlemen;

"As I find that a special general court is to be held this day, to which I have received no summons, and of which I knew nothing till a few days ago, I imagine that it is intended to receive the report of the proceedings of the committee appointed to enquire into the charges laid by me before the general court, in order to obtain your sanction to the intended report.

"I therefore think it my duty, in support of the cause which I have undertaken, to repeat my protest against the committee, which has undertaken to enquire into and report concerning the truth of charges, the greatest part of which is against themselves, as members of the board of directors.

"When I first laid the Case and Memorial before the general court, I had no idea that the truth of any of the charges could be disputed. I drew them up with great care, and on the last review, erased every thing about which I had the smallest doubt in my own mind. I was sensible of the powers and influence of those whom I was opposing, and that nothing could support me but truth and justice; I appeal to your candid recollection of my conduct in several instances in which the pensioners have been injured; I appeal to the inclosed testimonials* concerning my character in near forty years service, and to my conduct in the Hospital, whether I could have any other motive than a wish to recover and preserve this noble establishment to the sole use of the navy, and that the pensioners might be maintained in such a manner, 'as

* These testimonials were not delivered; captain Baillie had them ready, but finding little or no attention paid to this Letter, he declined any further attempts to obtain justice.—Orig. Ed.

'to encourage fit and able persons to betake themselves to the sea-service.'

"My situation, as lieutenant governor of the Hospital, is the highest preferment of which my rank in the service will admit. I have therefore nothing to hope from the success of the charges which I have exhibited, but in the line of my duty as an officer of the Hospital; and there is nothing urged in any part of the Case or Memorial in which I have the least personal concern: I was myself fully secured in ease and comfort, if I could have heard with indifference the complainants that were continually crowding to my door; and I know that I have acted contrary to those maxims of prudence and circumspection which govern the world; but I should have ill deserved the appointments with which I have been honoured, if I could have been deterred by menaces or dangers from doing my duty.

"I appeal, Gentlemen, to your general knowledge of the world, whether it is not more natural, in the current of human affairs, to suppose, that abuses have crept into the management of the Hospital, which has been so long established, than that every thing is perfectly right, and whether the knowledge of those abuses is more likely to arise from the complaints of the injured, or the reports of those who are termed the proper officers; abuses, it is well known, can only be prevented by frequent enquiries by those who wish, and have power to reform them, and such a wish must appear in the candour and attention with which the complaints are heard.

"That I have not been heard with candour, is too evident from every part of the proceedings on my complaints; I meant to appeal to a full court of all the great and noble personages who are named in the charter as governors and commissioners of the Hospital; *instead of which, I have been informed by lord Sandwich, that none are summoned to the general courts but those whom he thinks proper.** I have brought a general charge of neglect or misconduct against the majority of those into whose hands the government of the Hospital has fallen, supported by a variety of instances; and I have undertaken, at the hazard of every thing which is dear to me as a man of honour and reputation, to prove both the general and the particular charges.

"But I had no idea that in this country a tribunal could have been erected, in which the accused have sat in judgment on their own conduct, and are now to determine and report on charges against themselves; a situation which I did not imagine any man of reputation could have been betrayed to appear in.

"In drawing up many of the charges, I purposely stated them in the strongest terms, because I meant to provoke an enquiry. I know how common the maxim is to stifle and

suppress all complaints of this kind, and I dreaded if I did not bring on a full and fair investigation of the charges, that I should injure the cause which I meant to support.

"As I am convinced that several of the directors mean to act well, and are therefore conscious of their own integrity, I expected that on reading the Case and Memorial, they would have been as anxious as myself for an open and fair enquiry, as the only means of clearing themselves from imputations, especially those in which frauds are charged to have been committed on the Hospital, without any proper enquiry or punishments by the directors.

"My expectations would have been fully answered, when I heard the complaint of the directors at the general court that they could no longer act with credit to themselves or advantage to the public; if they had added, 'till the charges had been enquired into, and their falsehoods proved;' instead of which they say, 'till exemplary notice has been taken of the author.'

"The general court acted perfectly agreeable to my expectations, when they determined that a committee should be appointed to investigate the grounds of the several charges contained in the printed Case of the Hospital. But I was much surprised to hear my lord Sandwich propose that this committee should be appointed out of the directors themselves. Mr. Brett anticipated me in the objection, by observing, 'That they had already pronounced the charges to be false and scandalous, and that after the enquiry, the committee could do no more;' he might also have added, 'they could do less.' They had also demanded that I might be punished for having made my charges, a demand which they had a right to make, if they are false and scandalous; but they ought to have seen that this demand disqualified them from undertaking to enquire, or to give any further report, in order to obtain the punishment which they had demanded.

"It was contrary to every appearance of fairness and candour, and to every rule of public business in like cases, to appoint any of the directors members of the committee; instead of which, the committee appointed consisted entirely of directors; and the gentleman who took the most active part in reporting the complaints against me, was appointed chairman.

"I considered the offer of his lordship for me to name the committee out of the directors as a mockery and insult. I had seen at the board at Salters-hall, in which their complaint to the general court was resolved on, that many of the members, who were by no means included under the term 'acting directors,' are yet highly offended at every imputation on the conduct of the board, and also that they seemed eager to listen to every excuse that could be offered by those who were more actively concerned, as an excuse to

* This sentence in Italics was withdrawn, as before mentioned.—Orig. Ed.

themselves for not having paid more attention to the business of the Hospital. Had I not observed this, and had they not joined in pronouncing the charges to be false and scandalous without any enquiry, from the opinion which I had entertained of several of the members of the board, I should have been induced to have waved the general objection, and submitted the whole to their candid determination. Anxious as I am for my reputation, particularly on this occasion, when the welfare of the pensioners, in whose cause I have engaged, is so materially involved, I fear that the angry director will be forgot, and the private character of those by whom I am opposed will be weighed against me. I appeal, therefore, gentlemen, to your own bosoms at this moment, whether you are not much too angry against me for having made these charges, to hear with calmness and temper any proofs which may be brought to support me.

“Notwithstanding the objections which I have here made against the committee, I admit that their conduct might have been such as to have removed the greatest part of them. It was on this account that I appeared before them, though I was advised not to give any sanction to their proceedings, and that I urged them on, the first day of their meeting, to attend to the extreme delicacy of their situations; instead of which, the greater part of their proceedings have still been more irregular than their appointment.

“A counsellor has appeared against me during the whole proceeding, of which I had no notice; and I had no idea that counsel would have been brought down to Greenwich Hospital to plead against me, or the pensioners. The secretary and solicitor of the Hospital, who are both complainants, were present, and took notes throughout the whole, and Mr. Cooke, the clerk of the committee, is in the full predicament, against whom the greatest part of the Case is directed, as he is a landman, and now lodged in the wards of the pensioners, though his place does not entitle him to apartments in the Hospital by establishment. The rev. Mr. Cooke, Mr. Hicks, and Mr. Stuart, were generally present, though not of the committee, took an active part in the proceedings, and seemed determined to shew that they are the managing directors, whilst the door was carefully closed against those to whom the committee had any objection, and every person called by me ordered immediately to withdraw, after they had answered the questions proposed.

“Mr. Morgan, the counsel against me, was permitted to point out, and direct, all the proceedings of the committee; which he calculated so as to thwart and defeat the evidence, in a manner which I was by no means aware of, instead of investigating the grounds of the several charges, as ordered by the general court, and taking the Case fairly from the beginning to the end; the complaints of the se-

veral officers, clerks, and others, were taken as the foundation of the proceedings.

“Mr. Morgan had selected several passages from different parts of the Case and Memorial, which he had strung together in an unconnected manner, under the head of charges against particular persons, all of whom he frequently declared to be his clients. And I was then desired to prove not my own charges, but Mr. Morgan's; many of these passages I had no idea of applying in the manner which Mr. Morgan did; and others were matters of opinion, grounded on a long train of facts and arguments, which were not enquired into by the committee; on those which related to private characters, it was found that the opinions of some of the witnesses were of such a nature, that they did not think it safe to declare them, unless compelled by an oath. This was deemed a failure of proof, though it ought to be taken as a proof that the powers of the committee were not sufficient for the enquiry.

“Though Mr. Morgan's clients were by his contrivance become plaintiffs in the enquiry, yet they were all heard as evidence for themselves and for each other.

“Notwithstanding they were so much interested, particularly the landmen, in defeating the enquiry, whilst I made no attempt to avail myself of my own testimony, though I doubt not but my character and situation will intitle me to be heard with attention before any proper tribunal, as I have no interest in any part of the dispute, but the interest of the Hospital. Whenever I appealed to any of the complainants on things which are generally known in the House, if they seemed inclined to answer, they were stopt by Mr. Morgan, who very frequently declared, that he would not suffer his clients to give evidence against themselves; an artifice which may be proper for the counsel of a prisoner at the Old Bailey, but it is a very unfair and suspicious precaution in a court of enquiry into the affairs of Greenwich Hospital.

“When any of the evidence went in the least beyond the line drawn by the counsel, or spoke of facts which were charged, but not within the prescribed limits, they were told it was too soon; and if evidence after presented, which affected the same person, they were told it was too late.

“This mode of proceeding was more perplexing to me, as I had been refused copies of any of the complaints or proceedings against me, by the general court, by the directors, and by the committee,—as there was no opening or explanation given, which could direct me to the passages complained of, I was generally at a loss to know what those passages were; in points wherein I was fully prepared,—my evidence were usually refused to be heard, especially if they were pensioners; of this there a great many instances in the notes which I have taken of the proceedings; and amongst the rest, is the refusal to

hear the evidence of the men who happened to be then on guard, which was proposed as the most impartial method of taking the real sense of the pensioners in general, on the complaints of the linen, though this was first proposed by Mr. James.

"On those points in which I appeared to be the most fully prepared, the charge was generally declared frivolous, or not to affect the particular person who had complained of it, and therefore could not then be heard. But in all other cases, if the most pointed evidence was not immediately produced when demanded, the clerk was ordered to write no proof; and nothing afterwards could be heard on the subject, though the most unexceptionable testimony was offered.

"Mr. Charles Lefevre, who was at sea, at the time in which Mr. Morgan had called on, what he deemed the charges against the rev. Mr. Cooke and Mr. Godby, though he was the person from whom I had received the information of the letter written by Mr. Godby, after the composition with the butcher; and also the declaration of the rev. Mr. Cooke, in the Hospital, concerning the denunciation of lord Sandwich against me, through the rev. Mr. Cooke to Mr. Charles Lefevre, is now sworn to; and though he appeared at the last meeting of the committee, and offered his evidence, it was positively refused; and I believe that both these passages in the Case, now stand in the minutes of the committee. and will be reported to you as not proved. Many other of the facts charged are in the same predicament; amongst others which have not been proved before the committee, is the great nuisance in three capital wards, arising from the sink in lieutenant Besson's new kitchen, which passes through them, though it materially affects the health and happiness of sixty pensioners. This every man in the several wards is ready to prove; but the committee have repeatedly refused to hear them; and the boatswain, who was waiting to give evidence on the nuisance of the said sink, was complained of, for not paying proper respect to the reverend Mr. Cooke, who was continually passing to and from the committee-room; for which he was turned out of his office, though a man of a very respectable character. This and other proceedings of the like kind, greatly intimidated the pensioners, and created a general opinion amongst them and the nurses, that they would be punished if they gave evidence. Notwithstanding which, great numbers of them appeared; and I believe that they are still ready to give their testimony, which is a proof of their integrity and the justness of their complaints.

"The effects of the denunciation of lord Sandwich's resentment, by his chaplain, on the officers of the house, was very evident, in the cautious manner in which some of them gave their testimony before the committee, on those points which they had been accus-

tomed to declare their sentiments in the strongest terms, and the most public manner. The treatment which they received before the committee was calculated for the same purpose: an old and respectable officer of the house was most grossly insulted; and another told that his evidence was a libel. I was myself addressed by the chaplain, and the clerk of the works, in the most vulgar terms of abuse; the latter of whom had the insolence to reproach the naval officers of the house, as living on charity; and has since knocked down a disabled officer of the house, with his cane, within the walls of the Hospital; which is a fresh proof of the want of discipline and due government in the Hospital, as mentioned in the printed Case.

"It will appear, however, from the attestation subjoined to the declaration of lieutenant Lefevre, that a majority of the naval officers resident in the house, have given the fullest and most unreserved attestation, in support of my character and conduct in the Hospital; and I appeal, gentlemen, to your candid considerations, whether these attestations, which do me so much honour, could possibly have been given under so many discouraging circumstances, but from a conscientious conviction of the truth of their declaration. The declaration of Mr. Lefevre's father must be considered as that of a dying man; as he was, during the whole sitting of the committee, confined to his bed, and believed to be in great danger; yet when this paper was offered to the committee, by another officer, after I had been ordered to retire from the committee, it was refused to be heard, and his offer to answer any questions from the committee totally disregarded; by which I was deprived of the whole of his evidence. If the naval officers of the house, who thought proper to join in the complaints to the general court, against me (though they could have heard or read but a small part of the printed Case) had had proper ideas of their duty as naval officers, they would have felt it as an irresistible duty to give the strongest support to the cause, in which the interests of the navy, and the seamen under their care, was so materially considered.

"One of those officers was so far from fulfilling his duty as a guardian of the pensioners, as to tell the committee that the men worked in copperas grounds, and that this dirtied and spoiled their linen, rotted their shoes, heir stockings, and their breeches. This cause, assigned by captain Maplesden, was afterwards fully proved to be without foundation (see the 6th day's minutes), which fairly demonstrates how inimical he is to the cause of the pensioners, whom it is his duty to protect, though he was thus inadvertently drawn in, to give evidence on the wretched state of the linen, the shoes, and the stockings.

"With others of those officers who signed against me, I have had frequent disputes, on their attempting to take quantities of the pen-

sioners' broth, which they claimed as a privilege, and contended for with great violence, even at the council, and also on receiving ale as perquisites from the brewer, though they have no right to it. This I caused to be stopped, as I apprehended that it was one cause of the great complaints about the beer of the pensioners.

"These officers, for whom captain Chads, though the youngest officer in the house, undertook to speak, declared before the committee, 'that they never heard of any complaints, but about the beer, and that was immediately redressed,' though their names appear to several minutes of council; copies of which were sent to the directors, in which there are various complaints, particularly about the shoes, stockings, and other necessities.

"Captain Chads also undertook to give an high panegyric on the excellent moral character of the reverend Mr. Cooke, in opposition to the account of his conduct which I had given in the Case; who has spoken nearest the truth, on this delicate subject, may be a matter of future contest; but there has been laid before sir Charles Hardy the governor, a complaint in behalf of a poor baker in Greenwich, who has frequently declared, that the reverend Mr. Cooke had ordered a quantity of bread from him, above two years ago, to be distributed, instead of money collected at the sacrament, amounting to 4*l.* 1*s.* and also 40*s.* in silver which he ordered from him at the same time, neither of which are paid for yet; and the Hospital is under the disgraceful imputation of giving bread in charity, and running in debt with the baker. The committee will probably recollect how anxious Mr. Cooke was, that he should have full credit for his management of the charities in the Hospital; particularly that given in a late severe winter; and in this case, the baker was not paid till six months afterwards, as he the baker has averred.

"As the characters of the several persons who were called by me, underwent a severe scrutiny before the committee; and as I have been deprived of the opportunity of stating these facts before the committee in return, it is unnecessary to offer any apology for mentioning them here.

"Notwithstanding the most unprecedented mode of conducting this enquiry, every fact charged, which has been enquired into, has been fully proved; and generally appeared in a stronger light than has been charged in the Case, particularly the linen there said to have decreased in size and goodness, which was proved by a variety of positive testimony, and by shirts, sheets, &c. produced before the committee. Yet, though this complaint was more attended to than any others, it was by no means sufficiently investigated, and there is, at this time, a deficiency of a very large quantity of linen, which is allowed by the establishment of the Hospital.

"But the facts which have been enquired into make a very small part of those which are charged in the printed Case.

"The great charge, that landmen have been obtruded into the Hospital contrary to charter, to the establishment of the founder, and his royal successors, to the will of the numerous benefactors, and to the nature and end of the institution, the committee have positively and repeatedly refused to enquire into, though this is the parent of nearly all the grievances complained of. It was to obtain a report on this article that I attended the committee, notwithstanding the unworthy treatment I received, and compared with this, I feel little anxiety about the rest of the charges; as I am convinced, that if this was remedied, the greater part of them would of themselves fall to the ground.

"No enquiry was made into the charges on the conduct of the several officers and under-officers now in the Hospital, who were concerned in the improper management of the beer, in receipt of the bull beef, and other transactions of the like fraudulent kind; but several of them seemed inclined before the committee, to dispute even the verdict of the jury; as they probably would, the justness of the butcher's man, who was transported. No enquiry has been made into the bad state of the shoes, which was so fully proved before the council, and which are worse in every respect than those served in common work-houses; the stockings, which are in still a worse state, have also not been enquired into; and are totally incapable of defence or palliation.

"The whole business of the charity stock, in which is involved so many abuses, has not been taken the least notice of by the committee, though charged at length in the Case, and though the drunkenness so frequently imputed, as a reason for treating the pensioners with contempt, is occasioned by improperly giving so many of them money instead of provisions.

"The improper admission and treatment of the boys, and every other circumstance relating to them, were also neglected. The evidence which I offered, to prove the mischiefs and terrors to which the blind and feeble men are subjected, by the removal of the posts and rails, were all refused to be heard.

"Of the number of officers' widows now serving in the mean capacity of common nurses, under spinsters who have no claim to the establishment, no notice has been taken.

"Many of the matters which have been mentioned, were very slightly investigated; as the question, whether the Hospital is finished or not; and nothing has been offered on the subject, except the extravagant idea of the clerk of the works, that the Derwentwater estate was granted in perpetuity to finish the building. The several circumstances relating to the ousting the pensioners; and the encroachments by landmen, in different parts

of the Hospital, were very slightly enquired into.

"The bad state of the infirmary the committee refused to view; and have heard no evidence but that of Mr. Mylne; which can be fully controverted.

"The matter of the Painted-hall was slightly investigated, and appeared as stated in the printed Case. But had the committee visited it themselves, they must have seen many defects which were never observed before; and it is now doubtful whether it is not now injured by the great expence attending the cleaning of it.

"The many inconveniences and losses which have happened to the Hospital, from the very slight manner of examining and passing the accounts by the directors; particularly, the great loss in the case of Mr. Ellis, from the ineffectual checks on the steward's office; and the large sums which are annually expended under the head of necessary works, from the reports of the clerk of the works, with very little examination or controul. These, with many others, most material objects of enquiry (which may hereafter be more carefully enumerated) were all referred to the committee by the general court; but have either not been investigated, or the evidence which was offered, refused to be heard. And on many of them the committee might have had the best information and evidence, by examining the matters themselves, which they declined to do.

"But the great finesse by which every purpose of full and fair enquiry has been finally defeated before the committee, has been, that on many occasions, when I strongly pressed that my evidence might be heard, I was told by Mr. Cust, the chairman, that it was not proper now, but that when Mr. Morgan had gone through the charges against his clients, whatever matter I should then declare had not been investigated, or properly enquired into, should be fully heard under the general head of charges against the directors: this promise, Mr. Cust particularly repeated, when the gowns of the purses were shewn to him; which complaint was so evidently just, that he appeared to think it would not be disputed. And he very frequently declared that the committee could not finish their enquiries for several months.

"But on the day in which the charges selected by Mr. Morgan were to be finished, Mr. Cust did not attend, and another chairman appeared, who behaved in the most unwarrantable and arbitrary manner; refused to hear evidence on almost every subject; treated every attempt to impeach the conduct of the directors as a personal insult, which he resented with great violence; and decided upon several subjects of debate without attending to any other authorities or arguments than his own, which generally was, "that there were different opinions about the matter, and that was all he could learn about it."

"I was at length ordered to withdraw; after which the officers of the council, whose evidence had been finished, and they had withdrawn, were called in again, and the examination into the complaints against me resumed in my absence.

"On the breaking up of the meeting, I was informed that the next meeting would be to examine into the charges against the directors; and that they should want nobody but themselves.

"Thus, all the promises of Mr. Cust, and the expectation, which had prevented me from making any objections in the course of the enquiry, were defeated.

"I now find that the task which I have undertaken, to enumerate the several objections to the conduct of the committee, much too great to be effected in this letter; as it requires an enumeration of the whole, and appears much stronger in the proceedings taken at length, than in this abstract of them. As I have laid a full account of the proceedings before counsel, I must wait for their opinion and assistance. But I thought I should have been inexcusable to myself, to the pensioners, and to this court, if I did not make an attempt (however slender my hopes may be) to induce you to review and consider well all your proceedings against me, in this stage of the business.

"It is necessary, my lords and gentlemen, for your own honour and reputation, as well as for the cause of truth and justice, and the welfare of the pensioners under your care, that you should review the proceedings in the most dispassionate manner. I cannot yet suppose but there are here several gentlemen who will not submit to become instruments of oppression, and that they will declare the committee was improperly appointed for the investigation of truth, (on which ever side it is) or for the clearing the characters of the several parties—that the proceedings were irregular and arbitrary; and that it broke up in a manner which will not do honour to any of those concerned in it.

"Attempts may be made to hold me out to all future officers of the House, who shall dare to suppose that there are abuses in Greenwich Hospital—and I may suffer for having made those complaints—but I will not patiently submit to oppression. I must somewhere be fairly heard; and as the whole matter is now *sub judice*; and as I have a great number of affidavits of men of character, ready to produce and oppose to the volumes sworn against me in the King's-bench, by the parties who have moved for informations, I trust, my conduct will not be prejudiced by the general court; for I never had the least wish to attract the attention of any of the public on the affairs of the Hospital, if I could possibly avoid it; and as a faithful servant to his majesty, I am particularly desirous of avoiding every thing which may tend to disturb the minds of the seamen at so critical a moment as the

present; I therefore anxiously wish to gain the attention of the court, so far as may be necessary to put a stop to the principal evils complained of in the management of the Hospital, which disturbs the comfort and happiness of the pensioners, as there may then be no necessity for pursuing the retrospective view of the various causes any further.

"I well know the prejudices which are entertained against me; I have told truths of a very unpleasant nature; and I have stated facts, which are considered as reflections by those to whom I profess personal esteem; and others to whom I owe personal obligations. But when I made this attempt, to obtain a reformation of all the abuses in Greenwich Hospital, and a thorough investigation of the several causes, in order to prevent them for the future, I thought it my duty to tell the truth, and the whole truth, or that I should otherwise betray the cause which I meant to support. If I have erred, it has been on the side of a very sincere zeal; and if I have been imprudent, it has been principally at my own hazard; but I can solemnly assure you, gentlemen, that I had not the smallest personal interest or view in any of the complaints which I have laid before the general court; and that there are none of them but what I thought it my indispensable duty to make, in behalf of a body of men who have deserved well of their country.—I have the honour to be, with great respect, my lords and gentlemen, your most obedient and most humble servant,

THOMAS BAILLIE."

"P. S. I must now beg leave earnestly to repeat my former application, to be furnished, by order of the court, not only with copies of the several charges retorted upon me, by the directors of the Hospital, and by the several officers of the house, and of the clerks, turncock, labourers, &c. who have been urged to sign complaints against me, to the board of Admiralty, and to the general court; and likewise that you will order me to be furnished with copies of all such letters to the directors, from several officers of the infirmary, complaining of the defective state of the wood work in their apartments; and also copies of all such minutes or proceedings of the directors, as myself or counsel may think necessary for my defence, in his majesty's court of King's-bench, which I trust will not be refused me; especially as the contracting butcher was furnished by the Hospital with all such papers as were thought by him and his counsel to be necessary to strengthen his defence against the Hospital, in the action brought against him, in the court of King's-bench, for the several breaches of his contract, in supplying the poor pensioners with the flesh of bulls and bull stags, instead of good fat ox beef, agreeable to contract.

"THOMAS BAILLIE."

"Royal Hospital for Seamen, at Greenwich, August 12, 1779."

Who do you refer to, in that account, that struck the officer?—The clerk of the works.

What is the name of the boatswain that is turned out?—Boatswain Gough; it does not appear in the minutes of the House, that he was turned out for that offence; but that was the ground of his dismissal, though he had never been complained of in the course of eight years before.

Whom did you refer to, that struck the officer? And what is his name?—Mr. Mylne, the clerk of the works; I believe it was because he gave a favourable evidence on my account. Mr. Morgan said his evidence was a libel. I have in my hand the declaration of lieutenant Lefevre, which he signed on his death-bed, that was refused to be read by the committee. I beg to observe, that the present lieutenant-governor took a very active part in complaining against me, though he had not seen the printed Case beforehand, except for a short time. Whenever I produced a witness before the committee of directors, the council books were searched, to look into their characters for a number of years back, before they were permitted to give evidence. I must beg leave to observe, I had all the depositions in my hand that were prepared for my defence, in the court of King's-bench, I tendered them to the general court; they were refused, and the answer was, they were not come to hear evidence upon oath, but to receive the report of the committee; and many papers which I had applied for, to the general court and board of directors, were refused to me; though the contracting butcher was furnished with every thing he thought necessary for his defence, in the action instituted against him for fraud.

Whether you were ever called upon, by that committee of directors, to prove your book?—There is a letter on your lordships' table, which I wrote to the committee of directors, as they were to investigate the grounds of the several complaints made by me, that I might be permitted to prove them, in the order in which they were in the printed Case.

Did you desire to prove your book before that committee?—I desired to prove the Case, from the beginning to the end, before the committee.

Did they grant that request?—They did not; for my witnesses were refused to be heard; where they thought there was matter to be collected for the King's-bench, they were inclined to go on, they seemed to regard nothing else.

You were prevented in proving the grounds of your complaint, by that committee?—In a variety of instances.

Did you desire to call witnesses that were refused?—Yes, Mr. Charles Lefevre; when he was called into the room, the rev. Mr. Cooke was frightened; he thought he was at sea; he started up, objected to his evidence, and Mr. Lefevre was ordered out of the room.

Who was chairman at that time?—Mr. Barker; it was the last day of the enquiry.

You were not suffered to produce him as a witness?—I was not; and his father's declaration on his death-bed was refused to be heard. Captain Allwright carried it a second time, and it was refused. There were a number of blind men ready to give evidence; it was said the labouring men wore out their shoes and stockings at hard labour; I thought the blind men proper evidences, as there could not be that objection to them; they attended seven days, their evidence was at last refused.

You offered to call them, and they were refused?—Yes; in a variety of instances, boatswain Gough's was also refused; the whole was conducted as Mr. Morgan thought proper. Mr. Cust told me I should be heard when he had done; but the witnesses were never heard.

Mr. Cust told you, as chairman, that you should be heard when Mr. Morgan was done?—Yes.

Did you remind the court of his promise?—Yes; there was not the least attention paid to it.

When the enquiry commenced, did you lead it, to prove your Case? Or did Mr. Morgan begin it with any thing else?—Mr. Morgan had it prepared and drawn out into a book, and went on as he pleased; sometimes he opened my Case at the beginning, sometimes the middle, and where he pleased. I asked who he was? They said a counsellor, brought down there to lead the enquiry and direct it.

Who told you so?—Mr. Cust said so; nobody contradicted it.

You objected to it?—Yes; there was a gentleman at my house; I desired he might be present, which was granted; but this man at my elbow, the short-hand writer, came down to take minutes; he was turned out.

Did the court call first upon you, or Mr. Morgan, to examine the witnesses?—They would read a passage, and say to me, Prove that.

When a witness was called, who was first to examine him, you or Mr. Morgan?—There was nothing but a scene of confusion; when I asked a question it was generally objected to.

When a witness was called, was Mr. Morgan called upon first to examine that witness, or you?—I cannot say as to that.

Was your book regularly read through?—Not a word of it; only such passages as they thought fit to pitch upon.

I desire to ask, if he recollects, what reasons were given for turning Lefevre out of the room?—I know of no other reason than that the rev. Mr. Cooke got up and objected to his evidence; he said he had been under examination before, and he was not to be admitted afterwards; though, on a similar case, Mr. Mylne produced a witness, a Mr. Adams, who gave evidence, though, I believe, he had never seen the infirmary before; he said he

could not attend another day, and his evidence was admitted on several points.

Had Lefevre been examined before?—He had not been examined, he having been at sea; he was very abruptly turned out of the room.

You said Mr. Cooke went about the Hospital encouraging people to sign complaints against you; how do you know that?—I was told so by some of the people that refused to sign it.

You said a Mr. Morgan, a lawyer, was employed against you?—Yes.

Had you any lawyer?—No; nor was I informed of their intention.

Who was that gentleman that was at your house?—A clerk in the stamp-office.

He never practised the law?—No; I believe not.

How do you know that captain Maplesden had never read your book, when he signed the paper?—There were very few delivered out; I believe the Case that was produced at the council of Greenwich Hospital, was the very Case I delivered to lord Sandwich; captain Maplesden produced it; I believe the rev. Mr. Cooke gave it to him; how he, Mr. Cooke, came by it, I cannot tell. Maplesden took it from under his coat, and said it was a book lately published by the lieutenant governor; I was surprised to see, unknown to me, that a full council of the officers of the house had been got together, and captain Maplesden attempted to select passages out of my book that were obnoxious to the officers of Greenwich Hospital; but he could not.

How do you know that captain Maplesden had not seen the book but a few minutes before he signed the paper?—I believe so, because he could not pitch upon a passage obnoxious to the naval officers of that Hospital; after that Mr. Cooke took it, and he could not find a passage; then Mr. Godby took it, and pitched upon a passage about removing a sink at his door.

You have said that several persons were stirred up against you, how do you know that?—From what the people told me.

You said that the boatswain was turned out for not pulling his hat off to the rev. Mr. Cooke?—I said I verily believed, that that was the man's offence.

What reason have you to believe that? You said that was the only reason of his being turned out, what did you ground your judgment upon?—I know this man was several days waiting to give evidence; I attempted to get him in, Mr. Cooke saw him there; he would not be turned away from giving evidence; as he was waiting, he asked a brother boatswain why he pulled his hat off so often to Mr. Cooke, and said, "I pulled my hat off at first, and I don't choose to repeat it;" upon that this man was complained of by Mr. Cooke, to captain Chads, and he put him on the complaint-book. He came to me and told his story; I advised the man to go to

Mr. Cooke, and ask his pardon for any offence he had given him; he said, No, he would not forgive him, he should be tried by the council of the house. I believe that intimidated the pensioners very much; the committee were then sitting.

Was the complaint for not pulling his hat off?—That is not the complaint put down, but that is the ground of it.

Have you heard any other complaint?—Only I believe for not paying proper respect to the rev. Mr. Cooke. There is not a more respectable character of a seaman in Greenwich Hospital, or in England, than this poor man.

You say there was encouragement given or offered to persons that would sign a paper against you; how do you know that?—I know that Mr. Cooke went about telling the officers, that the book was obnoxious to my lord Sandwich and the directors.

That is not an answer to the question; you said, in your evidence, that encouragements were given to the people that would sign a paper against you; I want to know how you know that?—The rev. Mr. Cooke went to lieutenant Gordon, and said, Here is a letter abusing lord Sandwich; the man himself told me of it.

That is not evidence?—I cannot have other evidence; Mr. Cooke would not tell me that himself.

I want you to confine yourself to things of your own knowledge.—I can tell your lordships one very strong instance of preferment which has been given since, and probably might have been offered before; there is one Cook, (not the rev. Mr. Cooke) clerk to the late committee; that man, since this, (for his good services upon that occasion, I cannot conceive it was for any thing else) his son, who had been at sea two years and an half, or three years at most, upon coming home he was made a lieutenant.

The Earl of Sandwich. Does captain Baillie say this man had been but three years at sea, and was made a lieutenant; what is his name?—A. Cook.

Had he been but three years at sea?—He was at school in Greenwich; he might be put on the books of a yacht, but that is not actually being at sea, nor is he above 17 years of age, though the instructions say they shall be 20 years of age. My lords, there are other instances of favours granted to people who complained against me.

How do you know that this man's being made a lieutenant, was as a gratification to Cook for his services in this affair of the Hospital?—Because I verily believe no such irregular appointment would otherwise have taken place.

How do you know that this was an irregular appointment?—Because in 40 years service, I never knew an instance before of a person who had been only three years actually at sea being appointed to a lieutenancy; be-

sides, he is not above 17 years of age, and he ought to be 20; he is but 17 or 18 at the outside. I beg to say, I am now upon my oath, I don't wish to conceal one circumstance of my conduct in Greenwich Hospital.

[Captain Baillie withdrew.]

Mr. Cowley called in.

I beg to know what employment you are in?—I am clerk to the stamp-office.

What trade are you?—I am a stationer.

Were you ever bred to the law?—I never was at the bar; I had never any kind of knowledge of the law but what was accidental.

Inform the House whether you attended the committee of enquiry at Greenwich Hospital, that were to enquire into captain Baillie's complaint?—I did.

What day?—It is so great a distance of time I cannot remember the dates; I have minutes I can refresh my memory with [looks at his minutes] it was the 18th of April, 1778.

Was that the first day the committee met?—It was the first day.

Give an account of the proceedings of that committee.—They are exceedingly voluminous; I could be glad to answer any pointed question.

Did the committee first call upon captain Baillie to make good the charges in his book?—At the first opening of the committee, there were very long and disagreeable altercations; there was a deal of personal animosity to captain Baillie; the matter was very much disputed in what manner they should go on; captain Baillie produced a letter, and read, directing in what manner he thought they should proceed; and it was proposed to the committee, either to take the Case fairly from the beginning to the end, or to take that letter, in which I believe there were eighteen charges drawn up. The chairman said, We will direct the enquiry in what manner we think proper, and desired Mr. Morgan to go on; Mr. Morgan produced a number of charges.

Did they determine that they would proceed in either of those ways?—The only answer we had was, we will not take direction from you, we will conduct it in what manner we think proper; any thing proposed by captain Baillie was immediately rejected.

Who began the enquiry?—Mr. Morgan.

What did they begin with?—The first enquiry was under a number of charges Mr. Morgan had strung together, which he called charges against the surveyor. Mr. Morgan called himself counsel there, in consequence of a number of complaints made at the Admiralty against captain Baillie; that the complaints at the Admiralty were the ground of the proceedings.

When Mr. Morgan said he had collected charges against captain Baillie, were any copies of those charges delivered to captain Baillie?—No; he did afterwards let the

names of the persons be taken down. Copies of the complaints against captain Baillie were frequently requested by captain Baillie, but always refused.

Did they proceed on captain Baillie's complaints as conducted by himself, or on complaints against captain Baillie, or captain Baillie's complaints taken and conducted by Mr. Morgan?—There were continual disputes with Mr. Morgan and captain Baillie on the manner in which he carried it on; he collected those passages he thought most advantageous to his clients; they were generally those aggravating expressions that they thought might found an action in the King's bench; the question, whether the pensioners were well fed, or whether landmen were there, was no part of the enquiry at all.

The first thing they called a charge against the surveyor; did Mr. Morgan state what that charge was?—No; he turned, as far as my memory goes, to page 9, and said, Prove that; captain Baillie said, "I did not know what you was going to enquire on, if you will permit me either to follow the order of the book, or the letter which he had drawn up by the advice of counsel; in that case he would take care the witnesses should be ready when called upon, but that it was impossible for him to be provided for what Mr. Morgan might ask him;" and wherever we were pretty well prepared, that was not called for.

Did that irregularity continue?—Yes, it increased at the conclusion. The evidence in a great variety of cases was refused; the first instance was the business of the infirmary. Captain Baillie was astonished that they should dispute the account of the infirmary. I believe the officers of the infirmary had made complaints of their apartments; Mr. Mylne acknowledged he had those letters in his pocket; captain Baillie desired those letters might be produced; Mr. Morgan said, I won't suffer my clients to produce evidence against themselves; the matter was pressed for the committee to visit the infirmary.

Did the committee refuse to see the infirmary?—Yes.

How far is the infirmary from where they sat?—About a hundred yards; Mr. Mylne acknowledged he had the letters in his pocket of the complaints of the officers; capt. Baillie desired him to produce them, Mr. Mylne would not admit it.

Did Mr. Morgan call Mr. Mylne his client?—Yes, he did; all the persons that complained against capt. Baillie were his clients.

Who was the chairman of the committee?—Mr. Cust the first six days, Mr. Barker the last day.

Was he present at any of the other meetings?—Only one of the meetings; I believe the third.

At the last meeting, what was determined?—Nothing determined; there was a scene of confusion and altercation.

Did he, at the last meeting, refuse to hear

the evidence capt. Baillie produced?—Almost in every instance; one was the blind men, who had been affected by the removal of some posts and rails round the Hospital, by which they were liable to many accidents; he desired they might be called in; Mr. Barker would not let them; he said it was of no kind of consequence.

Were all the members of the committee directors of the Hospital?—As far as I understood.

Who attended on the first day?—Mr. Cust, Mr. Wells, Mr. Savary, and Mr. Reynolds. On the second day, I believe, the same members were present. On the third day, Mr. Cust, Mr. Barker, and Mr. Reynolds; that was the day on which Mr. Barker attended, I believe, rather more than an hour; he came in late. On the fourth day, Mr. Cust, Mr. Wells, and Mr. James, the latter of whom attended then for the first time. On the fifth day, Mr. Cust, sir Merrick Burrell, Mr. James, and Mr. Reynolds; capt. Baillie seemed to suffer a great loss in the want of the attendance of sir Merrick Burrell. The sixth meeting, Mr. Cust, Mr. Wells, and Mr. Reynolds. The seventh meeting, Mr. Barker, Mr. James, and Mr. Wells; but no one member attended the whole seven meetings.

Do you speak that with certainty?—Yes; Mr. Cust was present at six, not at the seventh.

Did capt. Baillie approve of the mode of the directors enquiring into their own conduct?—It was the constant matter of dispute; he said their enquiry was as improper as their conduct.

Did they enquire whether landmen were appointed contrary to the charter?—That was a subject of altercation; Mr. Cust said it was not a subject referred to them, and they would not enquire into it. Capt. Baillie urged that it was the chief matter of complaint, and that if the landmen were removed, that would, he thought, remedy all the other complaints; and as they would not enquire into that, he took up his hat, and was going out of the room, but did not go.

Whether they made an enquiry whether the landmen were appointed contrary to the charter?—After about an hour's altercation, when capt. Baillie insisted on the point as a material object of the enquiry by the committee, Mr. Cust in particular said, that it did not appear that it was any matter referred to them; though it was proper for the consideration of parliament, it was none of their business; it was very much urged, that it was a charge in capt. Baillie's book, and they ought to have enquired into the ground of it.

Whether there was any enquiry concerning wards taken from the pensioners to convert into lodgings for landmen?—It came in only collaterally; the committee did view the gallery in Mr. Ibbetson's apartments, to see how far Mr. Ibbetson had gained of the gallery; on viewing the gallery and reading the Case,

I thought it was as it is described in captain Baillie's book.

Did the committee enquire into the particulars of taking off the wards as described in the book?—They were frequently mentioned collaterally; there was no enquiry into it.

Did they enquire respecting the bull beef?—It was mentioned; I understood that all the facts respecting the bull beef were admitted.

Did they enquire into the conduct of the steward and the clerk of the cheque, in receiving the bull beef?—They said that the steward and clerk of the cheque said it was good beef, and seemed to say the charge was not true; I can read the facts at length as taken at the time of the committee; we sat down while it was fresh in our memory, and took the facts down in order to assist capt. Baillie's counsel; if the House wish it, I can read that or any other parts from the minutes.

Was it stated that it was the duty of the steward and clerk of the cheque to take care that bull beef was not delivered; was it enquired whether they were to blame or not in not attending to that?—Capt. Baillie urged the fact; the clerks seemed to urge, that if it was true, they had been deceived.

Was there any enquiry into their conduct?—Into the steward's conduct there was, pretty warmly.

As to capt. Baillie's complaints?—Complaints that Mr. Morgan thought proper; capt. Baillie and I were passive, as Mr. Cust allowed, after Mr. Morgan had gone through his points, we should be at liberty to take it up.

Was there any enquiry into the conduct of the clerk of the cheque and steward why they suffered bull beef so long to be imposed upon the men?—There were a great many questions of that sort; I can turn to it in the minutes.

Mr. Cowley, the Witness, reads as follows:

"The paragraph at the bottom of page 53, in the printed Case, viz. "The case is now greatly altered; and though almost every necessary had been for several years growing worse, it was not till the appointment of the late and present steward, that the grievances arrived at such a height, which makes any longer acquiescence under fraud and imposition impossible."

Mr. Morgan then desired the lieutenant governor to prove this general charge, who said he would prove it by a number of facts, and that if the committee would call in any of the pensioners, they would all say the same thing; to which Mr. Morgan said, that particular instances did not prove a general charge; and Mr. Cust said the pensioners would say any thing they were bid.

It was therefore determined, that there was no proof of the general charge.

The charge in page 56 was then read, and capt. Allwright called in, to whom it was also

read; he said that he was the captain of the week there mentioned; that he had observed the meat to be bad, and proceeded, as stated in the Case. That when the steward first refused to consent to a survey on the meat, Godby said that there should be no survey, as he did not send for the captain of the week. This idea of the steward's, and the whole matter on which it was grounded, capt. Allwright said had been the cause of many disagreeable disputes in the Hospital; that there was a clause in the contract, in which it was agreed, that if the steward thought any meat delivered was not agreeable to the terms of the contract, he should send to the captain and lieutenant of the week, that a survey should be taken by them and the clerk of the cheque, and on due examination, the meat rejected; but the steward, who probably read nothing but his contracts and accounts, did not seem to know that none of the parties who made these contracts had any authority over the naval officers of the establishment, and that they certainly could not place them under the command of the steward, or entitle him to send for them whenever he thought proper. That the naval officers were ordered by their commission and instructions to attend to complaints of the pensioners, and that they are to apply the proper remedy on the spot without delay; or if this is not in their power, or the power of the council of the House, they are to lay the same before the lords of the Admiralty, having nothing whatever to do with the board of directors.

Whether there was any enquiry made into the conduct of the officers of the house why they suffered this abuse to subsist so long a time?—One of the master cooks of the Hospital (not Moore) said that the meat when it was objected to was better than what was usually bought in the markets; the general impression on my mind, as far as I recollect at this distance of time, was, that the clerks of the steward and cheque seemed to dispute every thing said of the meat, and insisted it was better than what could be bought in the town; but in general the clerks seemed to be of one opinion, the naval officers of another; the clerks said it was good, the naval officers said it was bad.

Was the contract renewed with the same contractor?—It was; they said his being convicted of fraud was no reason why he should not be dealt with again.

Did they enquire whether there was bad and sour small beer mixed with water, turned into the pensioners' dining room for their use?—There was no particular enquiry; the facts in the printed Case were mostly admitted to be true; they were in full as strong terms in the minutes of the Hospital as in the printed Case; they allowed the facts were true, only they were carried too far.

Was there any enquiry whether bad shoes and stockings were delivered to the pensioners?—There was a good deal of enquiry

into the linen, but no evidence, I believe, on the shoes and stockings; the facts respecting the linen were admitted to be true, though much aggravated; it appeared to me to be the most fraudulent business that ever was, a scandalous fraud of many thousand yards of linen.

Was there any decision of the court that that charge was well founded?—The court always ordered us to withdraw, when they came to any resolution; nor would they read it afterwards; every thing, I found, almost was denied; and the facts that were proved, were said not to be proved.

Did capt. Baillie desire the witnesses to be called in?—Yes.

Did they receive the report of the persons that measured the linen?—I believe I could venture to say, that they were not admitted or paid any attention to.

Did capt. Baillie desire the committee to examine the sheets and shirts in the wards?—A good deal was said of that; capt. Baillie, after having examined the sheets and the shirts, said it might be supposed that he had been culling the shirts and sheets; go and examine the wards, go into any of the wards of the Hospital, I don't care where it is, you may have an opportunity of examining the shirts on the pensioners' backs.

Was there any enquiry about the washing of the linen?—There was a good deal mentioned about washing the linen; that was the day sir Merrick Burrell was there; it was very fairly enquired into upon the whole; the nurses were produced; Mr. Morgan, whenever we produced evidence, would not permit capt. Baillie to go on, but somebody was to controvert that evidence; but, upon the whole, it was proved, by the evidence of three or four nurses, and by the evidence of some of the pensioners, that the linen was in a shocking state, some of it mere filth, such as no man could put on.

Was there any enquiry about the sink complained of as a nuisance?—There was no enquiry upon it; it was often mentioned; capt. Baillie said the evidences had been waiting several days; but it was constantly refused or evaded; and they were never heard during the seven days. It was on that account boat-swain Gough waited, when he incurred the offence on which he was turned out.

Was there any enquiry into the state of the infirmary?—Except the evidence of Mr. Mylne himself, I believe there was no other evidence; the letters were refused; I examined the infirmary; I thought it was in a worse state than the printed Case represents; the windows were falling in; the appearance was so remarkable, it must strike any body that went into it; some of the sills of the windows, two or three, were quite rotten.

Did you attend in the court of King's bench?—I was present.

What was done with the rule?—What was the determination of the court?—I under-

stood the rule was dismissed with costs. I understand nothing of the matter technically.

Was there any enquiry about removing of the posts and rails round the Hospital?—No; that was one of the points not enquired into; there was a great deal of altercation about it; but it was refused; capt. Baillie desired the witnesses to go away; he said there was no justice for them; they might break their necks, or legs, or any thing; they would not have redress there; he desired the pensioners to be peaceable.

Was there any enquiry respecting the directors having summoned a captain of the house before them?—That was an admitted fact; but there was no enquiry, as I recollect.

Was there any enquiry into the directors' conduct, in giving to a thousand men money in lieu of provisions?—That was not enquired into.

Did Mr. Cust promise that that should be enquired into?—He desired that they might go through what they were about, and that any thing that capt. Baillie desired should be enquired into afterwards; but that promise, and all the hopes we had about it, came to nothing.

Did the committee make any enquiry into the danger of fire in the taylor's shop over the chapel?—No; capt. Baillie mentioned it, and desired they would enquire into that business; but his chief concern about the danger of fire was a new chimney in Mr. Ibbetson's apartment.

Did capt. Baillie desire to enquire into that? Is it stated in the book?—Yes.

Did they enquire into it?—No.

When Mr. Cust made the declaration, that every thing should be enquired into that capt. Baillie desired, was it in conversation, or as sitting in the chair?—There were some gowns shewn to Mr. Cust, and the difference was so striking, that Mr. Cust seemed hurt at it, and seemed to say, if there were things of that sort, it was right they should enquire into it; and said, as soon as Mr. Morgan had finished his charges, every thing should be enquired into.

Was the court sitting then?—He mentioned it first when there was nobody, I believe, there but himself; but I think he repeated it frequently afterwards; we were glad of the promise, and wished to clinch it.

Can you turn to your minutes to establish that fact; whether he did say it while the committee were sitting?—It was on the sixth day, previous to the meeting of the committee, that the gowns were shewn to Mr. Cust, and a cloak made out of their old gowns.

Can you turn to your minutes, to see whether that promise was made during the sitting of the committee?—If I could find it, it would be by reading a great deal; it presses on my mind that he did repeat the promise.

Was there any enquiry made respecting the government of the boys and their guardians?—It is difficult to answer these questions, the

matter came in so collaterally; Mr. Ibbetson had been the means of turning out the guardian of the boys, as captain Baillie suggested, because of his huzzaing under his window; the guardian of the boys was not called; the matter was not enquired into.

Was there any charge enquired into, that the barber, and clerk of the council, the porter, and one of the cook's mates, made sinécures of their respective offices?—It was no part of the regular enquiry; it was admitted that the barber had not attended many years.

Was Lefevre's evidence heard or received by the committee?—When Lefevre entered the room, Mr. Barker asked who he was; he said he was called to give evidence; the lieutenant-governor desired the evidence might be heard. Mr. Cooke said he, (meaning himself) had been under examination several hours, and he could not be heard; and he was ordered out of the room. Captain Allwright was called in; Mr. Barker asked him what he came there for; he said he supposed to prove the truth of a paper delivered to him by captain Baillie; and he was turned out of the committee in an abrupt manner; Mr. Barker said it had been objected to before, and he would hear no more about it.

Did the committee enquire whether the chaplains acquired the chaplaincies by granting annuities, or by being sea officers?—Mr. Morgan, I believe, delivered a message from lord Sandwich, that the committee would not attend to any matter that immediately respected him; that he would take care of it himself; I cannot charge my memory with the words; that was the substance of the message: lord Sandwich requested that the committee would not attend to any part that might affect him; he would take care of himself.

The Earl of *Sandwich*. Did he say he brought that message from me?—A. I understood so, from his words; I believe that is the purport of the words.

Have you made any minute or memorandum of that?—Certainly, it is here; I believe it was the second day, I am not very certain of that; if it will save time, I will apply to Mr. Morgan; I dare say he will acknowledge the message.

Is it in the affidavit of the court of King's-bench stating what passed from day to day?—There is but a small part in that affidavit; I drew the affidavit up in a hurry, and had not time to put down every thing that passed.

[Reads his Minutes as follows:] "The Case was then opened, at page 11, in the first paragraph of the charge against the chaplain, in which it is said, that Mr. Cooke had bargained and paid money for a seat at the board of directors; Mr. Morgan said, that he was instructed to acquaint the directors, that lord Sandwich would take care of all those parts which concerned himself, and therefore desired the committee to pass over them."

Mr. C. I could mention, in answer to the ge-

neral question respecting what passed, the manner in which the standard measure of the linen arose, quite in a different way from what has been represented since. At the meeting, when sir Merrick Burrell was present, when the business of the linen was investigated, Mr. Godby, the steward, seemed to controvert, that there was no standard for the linen, though he had said before, the standard was three yards and a half for a shirt, and five yards for a sheet; in consequence of that, a general order was given by captain Baillie, throughout the Hospital, for the boatswains to measure the sheets and shirts, which they accordingly did measure; they were not, I find, very accurate, for they did not allow thumbs; notwithstanding which, some of the shirts had only three yards; and there were a great many thousand yards deficient upon shirts and sheets, taking Mr. Godby's declaration, that there was a standard. Mr. Godby stated that he had since discovered, at the last meeting, one hundred and forty-five yards deficient; he stated it, I think, as an accidental deficiency; but how will one hundred and forty-five yards account for several thousand yards? Upon that general ground, captain Baillie, as I took the liberty to advise him, made a positive charge of fraud, and desired the directors to cause an immediate examination into the state of the linen, as it then stood; but they did not then make an examination.

The manner in which the minutes concluded may attract the attention of your lordships; the whole will give your lordships the strongest impression how the business was conducted; the last day, I confess, was most the object of attention and complaint, respecting captain Baillie.

Mr. Cowley reads, by order of the House, his Minutes, as follows:

"It being now near eleven o'clock, Mr. James (who had been expected with great impatience some time) coming in, the committee was opened, and consisted of Mr. Barker, chairman, Mr. James, Mr. Wells.

"There was never perhaps more pains taken to maintain the dignity of any chair, than was taken by Mr. Barker on this occasion; he was almost continually speaking himself, and was always in a violent passion, if any thing happened to interrupt him; he seemed sometimes not to be inclined to distinguish his friends; and Mr. Morgan, who had been treated with great deference and attention by Mr. Cust, was frequently reprehended by Mr. Barker, in a very rude stile; and when told that he asked his pardon, replied, "That was not sufficient." Mr. Barker repeated, numberless times, that all that was complained of had been done and approved of by three and twenty gentlemen; and it was a great and strange piece of impudence and presumption for the lieutenant-governor, who was only one man, to oppose the opinion of so many;

and, on all the subsequent matters, would hear nothing further than that they had been approved of by the directors. It was in vain that he was told, the lieutenant-governor considered himself as bound by his integrity, as an honest man and an officer, to make good the several charges, which he had deliberately laid before the general court; and that he was now ready, notwithstanding the prejudice and passion with which he was treated, to produce authentic evidence of facts, the nature of which could not be controverted, whatever sanction they might have received from the approbation of those directors, who usually attended the business of the Hospital, most of whom were not in independent situations; that it was too late now to pay compliments to any man; that he had taken up the complaints of the pensioners, which really existed; and was ready to stand or fall by the proof, before any legal or impartial tribunal—neither of which titles the committee had the smallest pretensions to.

“Nothing, however, could interrupt Mr. Barker in his career; and, compared with him, Mr. Cust was a gentleman and a man of business, though a more dangerous opponent than the present chairman.

“He now ordered the minutes of the last committee to be read; without which, he said, they were no committee. The clerk then read only the evidence which had been given under the head of Mr. Mylne, at the conclusion of the last committee; wherein, among several other omissions, were the question and answer of Mr. Skeene, the butler’s mate, “What ship he had served in?” To which he said, “That he had never been at sea.” The lieutenant-governor asked the clerk, why he had omitted this? He said, “that he put down nothing but what he was ordered by the chairman.” Mr. Barker echoed, to be sure, and over-ruled all farther argument about it. All Mr. Mylne’s opinions were taken down, very circumstantially, particularly where he denied the authority of the naval officers.

“Folio 39 of the printed Case was then read, concerning the cows kept in the store-yard, by the clerk of the works, “That it was preparing for a garden, and another store-yard built.”

“Mr. Mylne again seated himself at the table with the committee. To this the lieutenant-governor objected, and told the committee, that the insults he had received from the clerk of the works were so gross, that he ought not to sit at the same table with him. After some altercation, in which Mr. Mylne behaved more calmly than the preceding day, the committee determined he should sit where he was; though Mr. Godby, and others, had sat at the other table, and stood whilst they spoke. The lieutenant-governor told the committee, that he was satisfied with having made the objection; that he had already received much unworthy treatment,

which he expected would be continued; and he believed that Mr. Mylne would find still more favour for having insulted him.”

My lords, when there was an attempt to prove any thing, it was asked if it had been approved of by the directors; if it was said yes, Mr. Barker then said, I will hear no evidence of it; when evidence was attempted to be produced, he said it was frivolous, and they were ordered out of the room. If captain Baillie attempted to say any thing, it was generally objected to. Captain Baillie was desired to withdraw, and the proceedings of the committee finished in a hasty confused manner.

Have you taken any minutes concerning the conclusion of the committee?—I have.

I desire you will refer to them.

[Reads his Minutes.] “An altercation ensued in consequence of Mr. Barker’s telling him, the witness, that he was very impudent in interfering or speaking on the subject; in answer to which, it was said that he had accidentally appeared in this business, in consequence of Mr. Morgan’s appearing before the committee, without any notice being given to the lieutenant-governor; that if the committee meant to support the least appearance of fairness in the proceedings, they must admit that he had the same right to debate every stage of this business as Mr. Morgan had; that Mr. Morgan had carried the privileges of a counsel to a very extraordinary length in several instances. On the contrary, that he, as an assistant to the lieutenant-governor, had frequently been desired to speak to many points, as he had always confined himself to the subject within the bounds prescribed by the committee, and that he had been heard by Mr. Cust in all the former committees, and that sir Merrick Burrell, on the day in which he was present, had frequently desired that he might be heard; and that in his present situation, he certainly ought to be allowed to speak on the several subjects before the committee, without being insulted by the chairman. The chairman and Mr. Wells then told him, they would hear him no further, and that he must retire.

“The lieutenant governor then told them, that if they would not allow him a person as an assistant, and also to take notes, and be a witness of what passed, he must retire also; the committee, who had frequently expressed a desire to proceed without the lieutenant-governor, seized on this opportunity with great readiness, and told him, that he also must retire, and they both retired accordingly.

“Two large flasketts were then ordered out of the room by the lieutenant-governor, containing sundry necessaries, which the committee could not be prevailed upon to inspect, consisting of sheets, shirts, pillow-cases, towels, shoes and stockings, all of which were greatly deficient in quantity or quality, and had been delivered to him by the nurses and pensioners in the different wards of the

Hospital; and also specimens of some articles which had been delivered since the sitting of the committee, which were much superior to those which had been delivered before, particularly the stockings and pillow cases, the last of which were near twice the size. It was now near two o'clock, and the carriages had been ordered at that hour; there was no appearance when the lieutenant-governor left the committee-room, that any further business would be done on that day. But he was afterwards informed, that the officers of the council, who had all retired on the order of the chairman, were sent for again; the enquiry resumed, and their evidence taken against him in his absence.

"As Mr. Wells drove off in his carriage, the lieutenant-governor, who was walking in the square, asked him if the committee were to have any more meetings? He said, they were to meet on Tuesday next for the last time, to enquire into the charges against the directors, but that they should want nobody but themselves.

"Thus the committee finished their enquiry in the same irregular, arbitrary, and illegal manner, as they had begun and conducted it. Mr. Morgan was, in the beginning, permitted to pull the whole Case in pieces, and put it together in what manner he thought proper, under the head of charges against particular persons, all of whom he called his clients, and by this manœuvre, defeated every purpose of fair and impartial enquiry.

"It was hardly possible to urge any thing in what he or the committee would allow to be the proper time, if it did not strictly relate to the Case as Mr. Morgan had classed it, so that the lieutenant-governor was not to prove his own Case, but Mr. Morgan's.

"Mr. Cust had, on a great many occasions, promised that the several things which should not appear to have been enquired into, when Mr. Morgan had gone through the several charges, under the head of particular persons, should be enquired into under the general head of charges against the directors; and he had particularly promised, that the complaint of the nurses' gowns should be heard, though not charged in the Case; but as the enquiry is now to be finished in his absence, all these promises are dexterously got rid of."

Whether captain Baillie reminded the committee the last day of Mr. Cust's promise, that he should be heard at full length?—It was repeatedly mentioned; the facts seemed to make impressions on Mr. Cust's mind; we were in hopes he would attend to it.

Was it admitted by any of the committee, that such a promise had been made?—I don't recollect that it was admitted; it was not disputed; it might be supposed that no promise made was binding upon them.

Was it admitted by any gentleman of the committee the last day, that such a promise had been made?—I cannot say that it was.

Was there any gentleman present the last

day of the committee, that was present when the promise was made?—From the general complexion of the business, I suppose Mr. Ibbetson was present, I cannot say that he was.

When it was urged to Mr. Barker, did any body deny it?—I cannot say it was denied; I beg to refer to Mr. Cust himself, I am sure he will acknowledge it.

[Mr. Cowley withdrew.]

Mr. Lefevre called in.

Give an account to the House, in what manner you was treated before the committee?—I was called in to give my declaration; immediately on my entering the room, Mr. Barker observed something in a particular manner; I cannot remember what it was. The Rev. Mr. Cooke started up, and said, I should not be heard; Mr. Barker got up, and said, I should not be heard; we want to hear nothing you have to say, you shan't be heard.

[Mr. Lefevre withdrew.]

Captain Allwright called in.

I desire captain Allwright may be asked, whether all his evidence was heard before the committee of enquiry, or any part objected to?—There was a question put to me by the lieutenant-governor, which Mr. Barker refused to hear an answer to; it was respecting the broth of the pensioners; whether I knew any persons who were not entitled to it send for it; it was refused; I asked the committee whether I was to answer; Mr. Barker said no.

Whether you, at the request of captain Baillie, offered to carry lieutenant Lefevre's evidence in writing, who was not able to appear?—I had a writing of Lefevre's delivered to me; I carried it in; the chairman said it had been already objected to, and they could not hear it. Mr. Barker was the chairman; captain Baillie asked me, if it had been read; I said no; it had been objected to before, and could not be heard. Lefevre, who had been at the bar, said, I believe there is a mistake; they think it is mine, it is not, it is my father's; upon which I went in again and offered it, but was refused.

Were the officers of the council examined before captain Baillie, or behind his back?—I believe after he was withdrawn. I was sent for, and I and most of the officers were called and examined; captain Baillie was not present.

You were examined?—I answered some questions.

Were you present when any of the others were examined?—Yes.

Was there any examination?—Yes; some kind of examination questions were put.

Did you sign any complaint against captain Baillie?—No.

Did they read any complaint against captain Baillie?—No.

Was there any application to sign a paper against captain Baillie?—At the council, when

the paper was brought, it was put, whether it should be read; I said I thought the council had nothing to do with it; I wished to have nothing to do with it; I wished to go to the general court; the printed Case was produced by captain Maplesden. After the business of the Hospital was over, captain Baillie said, I believe the business is over, let them ask if any body else wants the council; that was published at the door; somebody said to captain Maplesden, have you nothing to offer?

Who was that somebody?—I don't remember; captain Maplesden put his hand in his bosom and pulled out the Case, and desired it to be read; he pointed out nothing himself; it passed through the hands of Mr. Cooke and Mr. Godby; they proposed to go out and form a committee against the lieutenant-governor; I said the kind of attack I had seen that day on the lieutenant-governor was very extraordinary, such as I had never seen before; it was very unusual; I was answered that it had been done before, a day or two ago, at Salters' Hall, I believe they said; I said I dare say it was not done, I presumed not on the chair; if they made that attack upon him, I said, I thought it would have been much more decent, if they intended to attack the lieutenant-governor, to desire the governor's attendance in the chair; they said then they would not make it an act of council.

Have you ever known any of the landmen behave ill to the lieutenant-governor when he was presiding in the council?—The lieutenant-governor stated some matters to the council to be carried to the Admiralty-board; they said it would not avail to carry it there; the lieutenant-governor said there were no directions in the bye-laws of the Hospital, to have recourse to the board of directors; that they had made several applications to that board to have grievances redressed, which were not redressed, and he desired to lay the matters before the Admiralty; that redress, he apprehended, would be had there; but as they would not make it a matter of council, he said he should present it himself; they said it would not be received, as it did not come properly.

Do you attend the council constantly?—I do not.

What is your reason for not attending?—I have seen, in my idea, things violently carried; I think we are rather over-ruled by a body, that seemed to me an improper body to rule the Hospital.

Lord *Dudley*. If you and the other military officers did attend, would not you be a majority against the civil list?—If we were constantly to attend, we should.

When you attended the committee with the deposition of Lefevre, was there any reason given why they rejected it?—That it had been presented before, and had been rejected.

Could you authenticate it?—No, I could not.

Did you not offer it yourself by way of authenticating it?—No.

Was there any objection of that kind made?—No.

Did you see him write it?—By no means; it was put into my hands by the lieutenant-governor.

As you, as I think, declared, that your reason for not attending so often as you otherwise would have done, was it, that you were over-ruled in these councils? I think that was what you said, or to that purpose; I should be glad to know who were those particular persons who presided chiefly at those boards, who over-ruled the military officers?—The council is not attended fully; it is looked upon, if the lieutenant-governor attends, or if there is a captain there, and two naval officers of the house, as the lieutenant of the week, or the captain of the week, that is thought sufficient, without there is a particular business, then other people drop in; when there is particular business, the civil officers attend.

You said you did not care to attend so often as you should have done, because you were over-ruled; who were the persons that took the principal share in the over-ruling?—The particular matter was a case respecting the beer; the lieutenant-governor was strenuous about several things that he thought were not taken that notice of he wished; he endeavoured to get it laid before the Admiralty; in that he was over-ruled. I have seen unpleasant altercations, and wished to keep from them, as far as my duty would permit.

I should be glad to know who were the principal persons that were concerned in over-ruling?—The junior members, in matters of that kind, when it came to a matter of division, are the civil officers. I have observed when that lead has been taken, the chair has been over-ruled.

[Captain Allwright withdrew.]

Mr. *Cowley* called in again.

Whether you could have authenticated that paper delivered in from Lefevre?—I attended Lefevre, who was on his death-bed; I had a good deal of conversation with Mr. Lefevre on the matter; he said he had some doubts how far he ought to go in respect to the lieutenant-governor on account of his own family; but he said, as he was on his death-bed, he must discharge his conscience; he said he knew captain Baillie to be a very worthy man, and he could not withhold his testimony. I held the paper, and he signed it; it is a warm encomium on captain Baillie and his conduct.

Did you hear that any body, when Mr. Lefevre (who I understand was a lieutenant in the Hospital) was dying, was there any body that went to persuade Mr. Lefevre to retract the opinion he had been of before?—No; I had some conversation with him on this paper, and he desired me to write down what he said; he signed it; it was as nearly as possible his expressions; I am fully persuaded he felt much in favour of captain Baillie.

Did he dictate the paper, and you write down what came from him?—I had a deal of conversation with him, to see what his mind was; I took it down after half an hour's conversation; I wrote down what I thought would please him; I read it deliberately over; he declared himself well pleased, and signed it.

Was he in a very feeble state at that time?—Very feeble; his mind seemed very sound, but his body very much emaciated.

How long did he live after that?—I believe a month; he was in a dying state; I believe he felt himself in a dying state.

[Mr. Cowley withdrew.]

Lieutenant *Smith* called in.

Give an account of what Mr. Morgan said to you, relative to your evidence before the committee of enquiry?—When I was called in, I begged to be excused speaking, and begged to refer to a paper; that indulgence was granted; upon my reading a few lines (I have the paper here), Mr. Morgan called out to me, and to the gentlemen there, I beg to stop you; I cannot suffer such a thing to go on against my client; it is a libel. Mr. Cust, Mr. Savary, and Mr. Wells, seemed to differ from him; after Mr. Morgan's objection, I was permitted to go on reading the paper. May I be permitted to read that paper?

You may.—Reads a paper, in which he had made a number of reflections concerning the disagreeable disputes and altercations which had for some years subsisted in the Hospital, which had prevented his enjoying that ease and tranquillity which he expected to have found in Greenwich Hospital; that in his opinion, the appointment of the chaplain to a seat at the board of directors, had been the cause of great inconvenience; and that there had, in the course of many disputes, appeared a spirit of malevolence that he was exceedingly sorry for; he wished, for private reasons, that the complaints in the Case had not been so public and general, as it would alarm many people in the Hospital; but that he could not avoid taking this opportunity of giving it as his opinion, that the lieutenant-governor had, on all occasions, appeared to be the poor seamen's friend; that he had always stood up for the pensioners; and that he had remedied many abuses; and believed that he had prevented others, which otherwise would have been very hard upon the men; this paper Mr. Morgan thought proper to call a libel.

[Lieutenant *Smith* withdrew.]

Thomas Rapley, a blind pensioner, called in.

I desire you will inform the House, if you attended every day during the committee, in order to give evidence?—Yes; I attended every day.

Have you any thing to say of any grievance you labour under?—Yes; the pulling down the posts and rails is a great grievance to the blind and lame; a man since has had his thigh broke; another blind man had his hands

crushed against the wall, by which he was laid up a fortnight; and I had like to have been run over by a stone horse, had not a person pulled me out of the way. I and another man were going in to give evidence; we were not permitted; captain Baillie said, "My lads, go home; you will have no redress here; you may break your necks, or legs, or arms; you will have no redress here." My stockings will not last one half the time; and my shoes burst out almost as soon as I put them on. The washing is so bad, the shirts stink very badly; they stick to my skin; your lordships would not suffer your hunting dogs to put such linen on; a shirt was brought to me all over mud; it had been trod in the dirt; I stuck two pins in the inside of the collar, and gave it to the nurse to put in the wash; the next week I had it returned just as bad as it was before, with the pins in the same place. There are a parcel of dogs kept opposite, that make a noise all night, that I cannot sleep.

How did captain Baillie behave to the pensioners?—He has behaved like a father, a governor, and a man, that would do us all the good he could.

Lord *Dudley*. Was the cravat you have on washed at the Hospital?—No; it is a cravat of my own; I pay for washing it myself.

[*Thomas Rapley* withdrew.]

John Marsom called upon by Captain Baillie.

A short debate here arose respecting the propriety of his giving evidence, as he had not been summoned, but seen accidentally at the bar by captain Baillie, taking their lordships' minutes in the room of Mr. Gurney. Resolved, that he should be sworn, and examined as an evidence.

Mr. Marsom, will you give an account to the House in what manner you was treated at the committee at Greenwich Hospital?—My lords, I was taken down to Greenwich to attend a committee, to take notes for captain Baillie; when I came into the room, I was asked who I was, and upon my informing them I was a short-hand writer come to take notes, I was ordered out of the room.

Mr. *Morgan* called in.

Give an account of what lord Sandwich directed you to say to the committee.—I don't recollect I had any instructions from my lord Sandwich; I never saw my lord Sandwich; nor was I, as I believe, instructed by any other person to deliver such a message from my lord Sandwich. The committee was to enquire into the conduct of some of the gentlemen of the committee who were not in the direction. Memorials were given in to the Admiralty, mentioning captain Baillie's publication, and praying redress; a court was called, and an enquiry directed. As to any thing that could affect lord Sandwich, I, as counsel, might go as far, as to say, it would be taking up the time of the committee to no

purpose, because I thought that enquiry had not to do with my lord Sandwich.

By whom were you employed?—By the solicitor of the Hospital. I wish the House to permit me to say a few words on the subject. A book was laid before me, by the solicitor of the Hospital; I was counsel in the complaint of the beef; and after having examined into a variety of charges, and knowing the allegations about the meat were false, I being acquainted with some of the gentlemen mentioned in that book, I thought the publication was malicious; it was put into the hands of these gentlemen, and, I believe, into the hands of a lady of quality; and they were advised to seek for redress. The motions were made in the court of King's-bench; they were made at all events before the committee determined; I had then a book laid before me by the Admiralty, directing an enquiry; upon which I took a large folio book; captain Baillie having arranged his matter according to his own method, sometimes taking up one part, then another, I took and arranged the several charges under the names of the persons charged; I arranged all the matters against the directors, as directors; I attended as counsel, not for the directors, but the gentlemen concerned in that book; and, my lords, I do say, there never was an enquiry made with more solemnity, justice, and impartiality; all the charges captain Baillie had made in his book were taken one after another; the charges were read, sometimes by the chairman, sometimes by the clerk; captain Baillie was called upon to produce his evidence to every part of the charge; there never was an evidence offered by captain Baillie proper to the point in question; there never was a witness called by captain Baillie to support the charges by legal evidence, that was refused; but when captain Baillie could not make out his charges, the eternal clamour was about bull beef and bad small beer. Captain Baillie was promised to be heard; and he was heard in every charge, but was not able to substantiate one piece of evidence against the gentlemen; I told the gentlemen for whom I was concerned, that if any of the charges should come out against them, I would never attend again; but I said I would not admit evidence that was illegal; when captain Baillie had not established his charges, they would sometimes enter into a defence, before a charge was established; Mr. Adams having gone through the most part of the Hospital, and inspected every thing, he said, had he been clerk of the works, and been to advise, he should have advised to be done what had been done; the committee went through every part of the complaints; they examined the wards of the Hospital; they examined the stairs; I don't recollect that there was a thing in the Hospital that they did not examine, from the foundation to the top of the Hospital, and even went out upon the roof, I myself attending them; there was not a charge but was ar-

ranged in the book; I myself arranged them; and I affirm, that of all the enquiries I ever saw, none was ever conducted with more solemnity, justice, or impartiality.

You say Mr. Adams gave great approbation of every thing done by Mr. Mylne; did you ever observe in Westminster-hall that architects were willing to support architects?—I don't remember that they have very warmly.

Have you ever known them find fault with one another?—I think I have.

Did you go into the infirmary with the committee?—I did not go into the infirmary, nor do I believe the committee went; but Mr. Stuart, Mr. Mylne, and I think the physician and surgeon, and perhaps another person attending, made very full enquiry into the manner in which the infirmary was built; and they said every thing was done that could be done by the skill of man; in fact there was a place where some idle people had trundled their mops, and there was some damage done to the walls and the floor.

Then you made a mistake in saying they examined every place, and that you attended; you must except that?—I am very ready so to do.

Whether they were desired to go to the infirmary?—I believe not.

Did they read the letters of complaints from the officers of the infirmary to Mr. Mylne?—I don't recollect any evidence of complaints made by the officers to Mr. Mylne.

This committee you say was carried on with the greatest order; do you recollect any case enquired into in any court of justice, where the plaintiff's matter was arranged into evidence by the counsel on the other side?—All the arrangement was putting the charge against every person under his name regularly, as captain Baillie had stated them; the charge against Mr. Mylne under his name, and against every gentleman for whom I attended.

Whether in your practice in Westminster-hall you ever knew that a complainant's complaint was ever arranged by the counsel on the other side?—I conceive no case ever came before a court of justice similar to this; and I think it would be much to the advantage and ease of courts of justice to arrange the evidence on both sides: I have seen the judges at the Old-Bailey much at a loss in calling witnesses, because there was nobody to arrange them.

Suppose Mr. Morgan was called upon as counsel on one side, and Mr. Dunning on the other, would Mr. Morgan advise that Mr. Dunning should arrange his client's evidence?—Certainly not.

Suppose an enquiry into the conduct of Greenwich Hospital, would Mr. Morgan advise his client to submit his case, to be arranged into evidence by the counsel on the other side?—Certainly not; but I submitted it to the directors.

If you had been counsel for captain Baillie,

would you have advised him to have it arranged by the counsel on the other side?—Suppose I was counsel on the other side, and the counsel for my clients had arranged the evidence as I did, I would have looked at the arrangement, but would not have objected to it. Captain Baillie was shewn the names, and the order of the persons, and told, the charges are taken from your own book.

Whether if you had been counsel for captain Baillie, you would have thought justice had been done him, if the counsel on the other side had arranged his accusation contrary to his opinion?—If the counsel on the other side had arranged the charges in such a manner that the end of the enquiry could not be obtained, I should object to it.

You directed the rules against captain Baillie in Westminster-hall?—Yes.

The event was not lucky, I believe, to your clients?—The rule was discharged with costs; it came out that no books were delivered but to the governors and commissioners.

You were employed by individuals—Whom?—The solicitor of the Hospital employed me generally; when I came to look into the book, I took the names of the individuals, and considered myself as their counsel.

With regard to the practice of courts, did Mr. Morgan ever know any courts of justice that should make a report when no one of the members attended every day?—I am glad I am reminded of that circumstance; it is said we attended seven days; I think Mr. Cust attended six out of the seven days. There was not a piece of evidence given (and I will beg to say the committee received evidence, which I knew not to be legal evidence against my clients, which I did not object to, knowing the uprightness of their intentions;) no evidence was given, but what was put down, and it was read over to the witness, and he was not permitted to go out till it stood in his own words.

Whether you ever knew a court of justice or enquiry making a report where no one member attended every day?—My lords, the king's justices have given their opinion in a case where the rest of the judges had not heard all the argument; but it has been delivered to them from the other judges.

It has been mentioned that Mr. Cust should say that captain Baillie should be heard at the end of the enquiry?—I believe I can explain that observation; when we were enquiring in a charge against Mr. Stuart, he would be talking of the charge against Mr. Cooke; it was said, do be so kind to keep to the point before the committee; we will hear you to that charge when we come to his case.

Did you hear captain Baillie at the end of the enquiry, when he desired to be heard?—I believe he did require to be heard several times at the end, but it was to charges that they had done with, and made their resolution.

As every thing was set down in the words of the witnesses, did it not appear that one witness stated that you had omitted to set

down what he had said; and the clerk said he set down nothing but what he was directed?—Much was said that was not proper evidence; and I directed what was evidence to be set down, and not what was not legal evidence.

Do you recollect the circumstance of the witness saying that he had given evidence of a man that had not been at sea, and it was not put down?—I don't recollect that.

There was mention made that some person offered in evidence at the court, that a person had not been at sea; captain Baillie observed, when he came to hear it again, that that was not set down?—There might be an observation of that kind; but whether an officer had been at sea or no, was not a part of the enquiry before the committee, and I might object to it.

Was there any evidence (that landmen had places in the Hospital) objected to?—That landmen had places in the Hospital was a subject of complaint in captain Baillie's book; but this enquiry was directed on the conduct of individuals and the conduct of the directors, and not whether landmen were in the Hospital.

From whence did you take the business of the court of enquiry to arise?—From the complaints made; I understood a memorial came from Mr. Stuart, Mr. Cooke, Mr. Mylne, and others, to the Admiralty, saying, that captain Baillie had published a book impeaching their conduct, and begging an enquiry might be set on foot, and their conduct examined into; that the council of the house, whose conduct was called in question, had likewise sent up to the Admiralty a memorial, requesting the same enquiry respecting them. I believe those two memorials, and those only, were the foundation of that enquiry.

Did Mr. Morgan never happen to read the order by which the committee was appointed?—I believe I did.

Do you recollect the substance of the order?—I do not.

Have you been directing the manner of proceedings, without knowing the substance of the order?—If I read the order, it cannot be supposed I could advise the committee to pass over any subject they ought to enquire into; I desired they should go into every enquiry they could legally go into, on that order; as I originally said, complaints came to the Admiralty, and an enquiry was directed; and, I apprehend, the committee had no right to enquire into any thing, but only what respected the persons making the complaint.

Do you understand, that the grounds of it was the complaint against captain Baillie? You don't mean the matter of which he complains?—The House is examining me to an order that I have not read many months, that I have no remembrance of; my judgment was, that they had no right to make any other enquiry than what they did.

Then, I think, you say, the committee con-

ducted themselves right; I ask, in particular, whether if the order was to enquire into the grounds of the complaint made by captain Baillie, whether it was not to enquire into the principal points?—I should think not; the complaint was by persons who complained of being attacked by captain Baillie.

If the order of the committee had been to enquire into matters of complaints, of particular persons, you might be right; but the order was general; do you recollect that?—If you are asking my judgment, I apprehend the lords of the Admiralty had not a right to order a committee to enquire into that matter.

But suppose they did, whether it was right or no?—Then I don't think the committee had power to enquire into it. I said before, there were two memorials came up to the Admiralty; the body of the directors were reflected on; there were two bodies; one of the bodies contained some of the directors; all the charges respecting the directors, I believe, were arranged and enquired into.*

Where would have been the illegality of it, if the court had enquired into and reported, that according to the charter, no persons but seafaring men had a right to such and such employments?—I apprehend two answers may be given to it, that the appointment of landmen is right, according to the charter; and if they had given an authority to a committee to enquire into it, they would have enquired into a nugatory act.

It is not what the committee had a right to do, but what they were ordered to do?—My judgment then was, and now is, that whatever the board of Admiralty directed to enquire into, the appointment of landmen would have been an improper direction; and my opinion is, they had not a power to enquire into it.

If the Admiralty had given an order, would they not have had power?—I apprehend not.

Don't you recollect the order?—No, I do not; I understood that the memorials sent to the Admiralty were read, and when the committee was appointed, the substance of the complaint, mentioning those who had complained, was mentioned in the order; and these persons were appointed to enquire.

The following resolution of the general court, of the 14th of April, 1778, read by Mr. Morgan: "Resolved, That a committee be appointed to enquire into the grounds of the several charges contained in captain Baillie's book." While I am reading the order, the House will permit me to observe, that I consider these words, "the several charges contained in captain Baillie's book," to be a relative; and the antecedent to be the two memorials sent up to the Admiralty.

Do you mean the charges against captain Baillie?—I meant no such thing, in the evi-

dence; complaints came to the Admiralty, from certain specific persons; they say charges are made against them in captain Baillie's book; the order is, to enquire into charges; what charges? The charges against the persons complaining; and, at their particular request, this committee was established; not to enquire if lord Sandwich put landmen into the office, but the charges against those men; we beg you will direct an enquiry into the charges made against us.

Is there any word said of that in the order?—That is my judgment.

Do you understand the order?—I thought I did.

You do now?—I think I do. *

Does that order say any thing about your judgment or memorials delivered to the Admiralty?—That I cannot tell, that memorials are mentioned. [Reads the order again:] "Resolved, That a committee be appointed to enquire into the grounds of the several charges contained in captain Baillie's book."

"The several complaints;" those are the words you rested upon?—I did.

Does the several complaints mean the several charges contained in captain Baillie's book?—I understand the complaints; the complaints of those that applied to the Admiralty.

Do you understand the several charges in captain Baillie's book to mean all the charges; or that it means partial charges, to be interpreted by you?—In this place, I understand, it only means the charges made against the persons complaining to the Admiralty, on this occasion; I conceive, under different circumstances, different constructions may be put upon the same words; if the order was made by this House, I should suppose the words would mean the charges in general; but in an order from the Admiralty, not understanding the law, they meant only the charges against the persons complaining.

Then it was a mistake in the Admiralty?—No; I think there was no mistake.

What then; was it ignorance?—Neither mistake nor ignorance; I think the words extremely improper; and think the committee would have done very wrong, to enter into any other enquiry than they did.

You talk of your clients; do you mean those who sat at the committee?—Certainly not.

Whether you were the counsel employed, with regard to the first prosecution against captain Baillie, at Westminster-hall?—I was in that; I advised a motion and information.

In what year and month was it you advised the carrying on this prosecution?—I don't remember; I believe the application was made to the court of King's-bench, soon after the book came out. [Mr. Morgan withdrew.]

Mr. Ibbetson called in.

I want to have the report of the committee; by what names is it signed?—By Mr. Cust
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* The chairmen of the committee; and sir William James, swear none of the charges against the directors were enquired into. Orig. Edit.

and Mr. Barker, who acted as chairmen of the committee, with their names only. [The report was produced.]

[Mr. Ibbetson withdrew.]

Adjourned to Monday week.

Monday, May 3, 1779.

Lieutenant *Gordon*, First Lieutenant of the Hospital, called in.

Had the rev. Mr. Cooke any conversation with you?—The answer I must give is this, that the rev. Mr. Cooke came to my apartment on Thursday the 25th of March, 1778, and informed me, that there was a book printed, which was rather defamatory to the officers of the royal foundation and the navy. My lords, I begged leave to give him for answer, that I could say nothing to it. It was the first of my receiving the intelligence of any such book, and therefore could give no answer to it; he told me further, that there was an intention to form a memorial against the lieutenant governor of the house, which I told him, I thought was not right; I therefore told him further, I could say nothing to the book, until such time as I had seen it and read it, and read what the book narrated to; this was my answer; he said, that he, and some more of the officers, proposed to present a memorial against the late lieutenant governor (captain Baillie) of the house; I told him I thought he did wrong; I should certainly, when I came to hear it, if it did not coincide with my opinion, I should give my negative to it; this was my answer, and my positive answer.

Whether Mr. Cooke represented that book as injurious to lord Sandwich, and to the naval officers of the Hospital?—He did represent it as injurious to the first noble lord of the Admiralty, and as injurious to the naval officers; this upon my oath I declare.

Did you ask Mr. Cooke to shew you that book?—I did, and he positively denied it; he had a letter in his hand, and wrapped it round his finger; he said, he had it from the noble lord, the first lord of the Admiralty; I begged the favour to see it; he said he could not let me see it.

Were you solicited to join in complaint against the book, at the same time that Mr. Cooke refused to shew you the book?—I was solicited; I told him I would do no such thing; I thought it rather a nugatory and defamatory thing, with regard to the second officer commanding that Royal Hospital.

Did Mr. Cooke make use of any means to induce you to come into his proposals of signing this?—He did solicit me to come into his proposals, and I absolutely refused it; I told him I thought it a wrong method, and wrong system in him, as a clergyman, to promote such a thing to be introduced against a second, and chief commanding officer at the time.

Did he say any thing of captain Baillie's

having any intention of turning you out of your apartments?—He did mention such a thing, but I told him I did not believe it, because I had never seen the book, nor knew nothing of what the book contained.

With what view did it appear to you, that Mr. Cooke did mention to you, that captain Baillie had intended to turn you out of your apartments?—He told me it was to make room for more wards for the pensioners; I said, Mr. Cooke, in regard to that, I have nothing to say; whatever the lords commissioners of the Admiralty's pleasure is, I, as an officer in that house, must comply with.

Did Mr. Cooke say he had been round to all the officers, to complain against captain Baillie?—Yes; excepting captain Allwright, lieutenant Lefevre, lieutenant Kerr, and lieutenant Ansell.

When the complaint was proposed at the council, did you sign it or object to it?—I objected positively to it, and I said, it was a wrong system and method in them to criminate a commanding officer, without any just offence; I told them all so at the time.

By whom was the book produced?—By captain Maplesden, the now lieutenant governor, who was then first captain of the house.

Was the complaint made an act of council of the house, or made an entry in the minute-book?—I objected to it; they proposed to make it a minute of council, but Mr. Cooke the night before said, that it should not be made an act of council, but brought in after the council was over; I told him at the same time, Sir, I think you are wrong, you are to do as you please.

Was any attempt made to put captain Baillie out of the chair at the council?—Yes; Mr. Godby, the steward, and the rev. Mr. Maule, second chaplain, made the attempt to put him out of the chair; I opposed it with all my might and main, nobody else seconded it, therefore it dropped.

Was that seconded by any of the naval officers?—Not one.

Is there any party or faction of landmen existing in the council of the Hospital?—A very great faction and party; may I presume to mention them?

Certainly.—In the first place, John Ibbetson, secretary to the board of directors, and a clerk of the Admiralty; there is John Cooke, the first chaplain, John Godby, the steward, and the rev. John Maule the second chaplain, Francis Cook, the deputy secretary, and many others of the land faction.

Do you observe that these gentlemen act together, and in opposition to what comes from the naval department?—I do often.

Do you constantly attend the council?—I do not; the reason is, there is such a land faction got into the council now, whenever they have any point to carry, they take care to have all their friends there; and it is customary, my lords, in that council, that the

junior officers, as at courts martial, give their voice first; my reason for not attending the council is, because that land faction makes a party; and let all the naval department do what they please, they over-rule us.

Has captain Baillie appeared a friend to the naval establishment?—There never was a father of a family more tender of pensioners than he has been.

Has he acted with diligence and propriety in his office as lieutenant governor?—Always since I had the honour to be in the council, with great diligence and propriety, and as a vigilant active officer.

Are the men's shoes and stockings adequate to the purpose of three pair to last two years?—They are not adequate to the appointment.

Have you read captain Baillie's book?—No, I have not; I have never seen it.

Whether in the council of the house the military officers out-number what you call the faction, or whether they do not?—They do out-number the land faction, but the land faction work over the military officers to their side of the question.

Are there more military officers in the council of the house than land officers?—There are more military than land, but the land officers of late have got such a superintendency, that they over-rule all the military officers, for we are thought nothing of in the house, but the land officers.

If the military officers attended, would not they out-vote the land faction?—I don't know that they would.

How many military officers are there of the council?—The governor, lieutenant governor, four captains, and eight lieutenants; these are all the military officers that I know of, the rest are all land officers.

How many are there of the civil interest; what you call the land faction?—The secretary of the board of directors, two chaplains, the steward, and several others of the land faction.

Go on to name them all; you have named but four.—The clerk of the cheque has, I believe, been a seafaring man; and there is the physician, he is of the council, a civil officer; the auditor is likewise a civil officer; he is of the council.

Is the clerk of the cheque of the council?—No, he is not.

There are fourteen of the council, if I understand you right, that are military officers?—I cannot charge my memory exactly.

You have named fourteen.—I named the governor, lieutenant governor, four captains, and eight lieutenants.

They are fourteen military officers; who are there that are not military officers, that are of the council?—Mr. Godby one, the steward; Mr. Ibbetson two; Mr. Cooke, the first chaplain, three; Mr. Maule, the second chaplain, four; the auditor five. They so contrive it when they have any method to carry.

Go on to mention the names; is the clerk of the cheque of the council?—No.

There are in the council, 14 military officers, and five of the land faction; how is it possible then, that the land faction should preponderate in council, if the military officers would attend?—Because the land gentry, as I call them, that is what is called the civil interests, but I know no such interests at Greenwich Hospital, nor ever understood there was any such interest at Greenwich Hospital, as a civil interest; that, by their party and faction, they cajole the naval officers over to their side.

That is to say, the land faction, with their friends, carry every thing.—They do.

Is it looked upon in Greenwich Hospital, that an officer is most likely to get preferment by siding with the naval officers, or the land faction?—I believe with the land faction; because they carry so much weight with the noble lord who presides so much at the Admiralty board; there they have great weight.

The Earl of Sandwich. What reason have you to suppose, that any of those gentlemen carry great weight with the first lord of the Admiralty; do you know any thing of that, of your own knowledge? I desire you to answer that question, upon your oath. Do you know, of your own knowledge, whether any of the land faction of the council, have any influence with the first lord of the Admiralty?—I cannot say, upon my oath, that I can say so; but I have often heard it said so. I cannot say, I know it of my own knowledge; but I have often heard it said so; and, by the manœuvres that have been made in the house, I do think it is so.

Do you think it is so imagined in the house?—It is so imagined in the house; greatly so. [Lieutenant Gordon withdrew.]

William Gough called in.

What is your station in Greenwich Hospital?—I was a boatswain there some time ago.

What are you now?—A common pensioner.

What is the reason that you were a boatswain before, and are now no longer so?—At a committee held at Greenwich Hospital some time ago, I was sent for there by lieutenant-governor Baillie, to answer some questions which might be asked me; in waiting on the outside, I saw a brother pensioner there, very officious in taking his hat off every five or six minutes to people that passed and repassed; in a free way, I said, "If I was in his place, I would not take off my hat so often to every gentleman, for no gentleman required a poor man to take off his hat, but at his first approaching, or while talking to him." A publican, that was standing by, went and acquainted the rev. Mr. Cooke of what passed; he came, beckoned with his finger "You, you." I asked him if he meant me? He said he did; we withdrew a little way from the place; he said, "I understand you have spoken some disrespectful words of me." I

said, I did not. Said he, "What did you say to such a man?" (one White). I said, I told him if I was in his place, I would not take off my hat so often to any body as he did. He said, "I was an impudent old scoundrel, and was guilty of faults." And that was what I was dismissed for.

What happened in consequence of this? Who were you brought before?—At six o'clock the same evening, I was sent for before captain Chads, the captain of the week, and this White, and one Herbert, a publican; they were there as witnesses to what I had said; I was ordered to be put upon the complaint-book for being disobedient to the rev. Mr. Cooke, and the Friday following I was dismissed from my bread.

By whom?—The council.

What enquiry did the council make into this business?—They made no further enquiry than heard what was laid against me, upon the complaint.

Did you state to them, that you had said nothing more than this?—I said no more than that; but I meant no harm nor disrespect to any gentleman whatever.

Was nothing more than that stated against you?—Not to my knowledge.

How long had you been at sea?—Forty years; twenty-eight years in his majesty's service.

Have you been in any engagements?—Yes; in May and October engagements, 1747, with commissioner Hanway; he was a captain then; and I was at the taking of Thurot, at Carrickfergus, on the North of Ireland, and the Courageux; I was in the Brilliant frigate at that time, and have been at sea ever since, till I came into Greenwich Hospital.

Is there any nuisance in your ward at Greenwich Hospital?—There was a nuisance, it is there I suppose still, that proceeded from a pipe that was laid down from the top of the house, into a pipe that was erected to lead the rain water into the common sewer; and, through the means of a pipe being laid into it, from one of the officer's apartments, it occasioned a nuisance there.

Has captain Baillie supported the rights of the pensioners? Is he a friend to the pensioners?—No man can be more a friend to them, as far as I see, than what he has been.

What ward do you belong to at present?—The Namur ward at present.

Is the pipe offensive in the Namur ward?—No; in the Jennings ward, when I was a boatswain in that place.

Which ward is the pipe a nuisance to?—To the Jennings ward, and the Royal George likewise; it lays down through both.

[William Gough withdrew.]

Alexander Moore called in.

What employment have you in Greenwich Hospital?—Cook, in one part of the Hospital, at present.

Were you the person that made the first

discovery about the pensioners being served with bull beef?—Yes, I was.

Did you take much pains to discover that fraud?—Yes, a great deal.

In what way?—I often spoke to the butcher's men to stop it; and made enquiries what the contract was for the meat, as it was bad from September to June. I then went to Captain Baillie, and enquired about the contract for the meat, finding it to go on in so bad proceedings; he said the contract was for good fat ox beef and wether mutton. After I had stopped the proceedings of it on the first of June, as I observed to your lordships, when I had the honour to be at your lordships' bar some time ago, I was entreated by several of the officers to deny there had been bull beef in the Hospital; and after that, the steward went to the governor, on the 12th of June, 1775, on purpose to get the governor to threaten to stop the proceedings. I went to the governor, sir Charles Hardy; he took me into the parlour; he said he found I had known the meat to be bad some time; I said it had been bad ever since I had been in the Hospital; he said I did not act the part of an honest man, not to inform the House before; I told him I did not know any thing what the contract was, but as soon as I did know what it was, I discovered it; he asked me who told me about the contract, I said the lieutenant-governor; I said there were no instructions for me in my office; he then gave me ill language; he said he would discharge me from the office, for being a busy fellow; I said it would be hard for my family, if he did any thing of the kind. Coming through the passage I made an excuse; I told his honour I should be glad if he excused me from any duty of that kind; he then said, I must tell the steward and clerk of the check, and take care of myself, for I should not be long there. I made application to the lords of the Admiralty on behalf of myself and family; I have a copy of the letter in my pocket; lord Sandwich bid me make myself easy, and things should be enquired into; I apprehend, if captain Baillie had not taken the very steps he did, that there never would have been a prosecution against the butcher, or any thing else; it seemed that party in the Hospital were carrying on such proceedings, and would to this day. I was employed by the solicitor of the house for two years, on purpose to bring the contractor to trial; I took all the pains I could; I believe in two years, I went near 3,000 miles upon account of it.

Did sir Charles Hardy reprimand you, and tell you, you would be dismissed, if you did not take care of yourself, for being or not being a busy fellow?—For being a busy fellow, and troubling myself about the butcher's meat; those were the very words.

Had you any conversation with the rev. Mr. Cooke upon this subject?—In August, I think, 1777, I had been in great distress, the solicitor of the house had told me, I must

find money for my expences, he could not give me any money: it would be called bribery, but when the trial was over I should be paid. I had a family; I made applications; I got money, and bore all my own expences; when the first trial was over, the solicitor paid me 10 out of 19*l*. I applied to the board for money; I was distressed and troubled several times by the people I borrowed the money of; I got no redress. About the 14th of August, 1777, I happened to meet Mr. Ibbetson upon the walks; I asked him in what method I was to apply to get my money; he was upon that account affronted. About the 15th, the rev. Mr. Cooke sent for me, and said I had affronted Mr. Ibbetson; and if I did not go and ask his pardon, I should get no recompence at all; I did go. In the course of the discourse, Mr. Cooke happened to say, that Mr. Baillie had been a very troublesome fellow in the Hospital, and he himself had taken care that he had lost his best friend, and he might get him as he could, mentioning lord Sandwich.

Were your bills of expences ever paid you? —Not all.

How much did the whole amount to?—For the two years to about 45*l*.

Had not you a bill of 19*l*. paid you? Did you never receive any thing by way of reward?—I had 10*l*. paid me, after I had made an affidavit before justice Russell, a justice of the peace. [Alexander Moore withdrew.]

Mr. Cust called in.

Whether you were present at the meeting of the general court of Greenwich Hospital, (the first meeting I think it was) that ordered the court of enquiry in last spring; in April I think it was?—Upon my word, I don't know; if I knew what business was done at the meeting, I could tell whether I was there.

When the court of enquiry was ordered?—I believe I was at that general court.

Whether you were not the person that made a motion there, in order for a committee to enquire into the several charges contained in captain Baillie's printed Case, concerning Greenwich Hospital?—Yes, I was.

What did you propose by that motion, and understand to be the purport of that order?—I understood the purport of that order to be to enquire into all the charges contained in Mr. Baillie's book; and I understood that those charges consisted of three parts, as they appeared to me upon reading over Mr. Baillie's book; the first part was abuses in the Hospital, from three to ten years, that had a great many of them been remedied; the second was abuses subsisting in the Hospital, that Mr. Baillie thought wanted a remedy; and the third was, what appeared to me, on reading over the book, libels against the directors, and the several officers of the house; and as the court of enquiry was founded upon petitions presented by the directors, and the se-

veral officers of the house complaining that their characters were unjustly attacked, I did think, when we had the honour to be appointed the committee, that it was our duty, first to go and examine into those charges relative to the officers of the house; because, in respect to the directors, Mr. Baillie protested against the committee, and I thought very properly, for sitting upon charges in which they themselves were concerned; and therefore I did not think we were competent to go into charges in which the directors were concerned; in consequence of this, before we went into the enquiry, Mr. Morgan, the counsel, called upon me, to know if I had any objection to his being counsel to the several parties that had presented petitions to the Admiralty; I told him I had not; and I told him I thought the plan would be, for us to take out of Mr. Baillie's book all the charges; what I call the libellous charges first, against the officers of the house, and examine into them first, and desired he would put them down; he did accordingly put them down in a book, and he gave me a copy; I compared it with Mr. Baillie's book, in the best manner I could, and it appeared to me, that the several charges that related to those parts of the conduct of the officers, were very fairly put down; and when we met Mr. Baillie the first time, I told him the mode in which we intended to proceed; he objected in general to the mode, as he had done before. He objected, that we were improper people to enquire; I told him, I thought, with respect to the several officers, that we were very impartial, and competent to enquire into it, and that was the mode we determined to proceed in; if he chose it, he might produce his evidence; we should call upon him to support his charges; then we should call up the other persons, to shew that the charges were not true; this was the mode we had pointed out.

Were not the persons named to form the committee all directors?—They were all directors, because there was something that appeared to me very fair in the proposal; and I did not know indeed who could be the persons to be named, because I had no idea, that the general court of commissioners, consisting of the great officers of state, if they had been proposed, I had no idea they would attend to this enquiry; when that matter was proposed, I was at the Admiralty, at the general court; the first lord called upon Mr. Baillie; he said, Mr. Baillie, you have in your book said, that there are a great many men of reputation, wealth, and honour, that attend often at the board;* will you point them out, because if you will, I shall move this court, that they be the persons that shall make this enquiry. Mr. Baillie refused to do that; then

* The words in captain Baillie's book are, "Men of worth and honor do sometimes attend the board;" but he has never said they were sufficient in number to constitute a court. *Orig. Edit.*

the committee was appointed, leaving out all those persons against whom Mr. Baillie had made the particular charges.

Did you name the committee?—I did not.

Who then did?—The red book* was called for by the first lord of the Admiralty, who read the names of the directors, and said he was of opinion, to form a committee out of the directors; we will exclude those that cannot attend, and those that are particularly charged in Mr. Baillie's book; and as the names were read, the rev. Mr. Cooke being particularly charged, he therefore was not one; then several admirals and captains that were at sea, they were left out; the only people that could be afterwards found, were the seven or eight that were left for the enquiry; if there were none others, how could capt. Baillie chuse his men? Mr. Fonnereau declined afterwards, he said his health would not permit.

Then were the persons that formed this committee named by the earl of Sandwich?—My lord Sandwich said, I think, my opinion is, the book should be called for, containing the names of the directors; and those that cannot attend should be left out; and those against whom there are particular charges should be left out; and the rest should be the committee; and the general court agreed to it.

Was the committee so pointed out by the directions of lord Sandwich?—It was the general court did it.

Did lord Sandwich point out to the general court the persons to be of that committee?—Yes, I think he did.

Were you chairman of that committee?—Yes, I was. When I say I was chairman, I was chairman for the time I could attend; I attended from the 18th of April to the 8th of June; we had six or seven meetings in that time; I think I went into Lancashire; the committee met afterwards, and then appointed another chairman.

For how many days were you chairman?—I believe six or seven times; but the report will shew it; because it is there particularly marked.

Whom did you look upon, in that enquiry, to be the plaintiff, and who the defendant?—I don't know whether I can answer that question, not being a judge of law; but it was an enquiry, I conceive. I will shew your lordships the mode we endeavoured to go on with; it was this; these charges being so set down, we took Mr. Baillie's book, and we read a charge; the first charge, for instance, against the surveyor was, † "that he had built

an infirmary as a palace for officers;" we called upon Mr. Baillie to prove this charge, and then called upon the surveyor to give an answer to the charge; that is the way we proceeded; I did not know that there was a plaintiff or defendant in the case; the committee were summoned to enquire into the charges contained in Mr. Baillie's book; the officers, having presented the petition, may be properly called the complainants, and Mr. Baillie the defendant; we called upon Mr. Baillie to give proof in his book of that fact; and then upon the others; to shew whether they were guilty of it or not; that was the mode in which we proceeded.

I think you say they called upon captain Baillie to prove his book; in that respect, he was the complainant: at another time, you say they called upon the gentlemen who had complained, as complainants?—We read a charge in the book, and having read that charge, we called upon Mr. Baillie to give his proof of that charge, which Mr. Baillie, in some cases, did; in some cases he did not; then we called upon the person charged, to shew that it was not true; and when we had done that, and had examined through the whole of the charges against this man, then we desired the court to retire, and the committee, among themselves, while it was fresh in their memory, came to a resolution, whether they thought the charges well founded or not.

Was any counsel permitted to attend?—Mr. Morgan attended; Mr. Baillie first objected violently against counsel; I told him that the gentlemen charged thought it right to have counsel, and that he might have counsel if he pleased; I think his answer was, he could not afford to pay for it; but he desired he might have a friend; we said he might; he did produce a gentleman, a Mr. Cowley, I thought a moderate, sensible man; I thought him, then, a gentleman of the law, by his ability in the business; but since understand he was not.

Then Mr. Cowley was permitted to assist Mr. Baillie, in the same manner as Mr. Morgan assisted the others?—Yes.

Were any motions made by Mr. Cowley, in consequence of his being looked upon as counsel, and as a friend for capt. Baillie? Did he make any motions to ask any questions?—Several times; I wish he had asked more; for Mr. Baillie was very troublesome in the committee, and, at some times, behaved so rude, I thought the committee would not go on: I appealed to Mr. Cowley as a moderate man, and said, you are brought here to assist Mr. Baillie; I wish he would let you go on; you understand the matter; we shall go on with greater ease; but Mr. Baillie would not permit that; he took upon himself to examine the witnesses; and would not let Mr. Cowley go on.

Whether Mr. Morgan did not arrange the manner in which captain Baillie's complaints

* Court Register.

† The words of capt. Baillie's book are, "The architect of the new infirmary, who, instead of constructing it as originally intended, principally for the sick and helpless pensioners, built it rather as a palace for officers than an infirmary for sick; the natural consequence of which is, that there is not room sufficient for the helpless men." *Orig. Edit.*

were to be examined?—Yes; but it was at my request.

Did not Mr. Baillie object to Mr. Morgan's arrangement?—Yes; and said, I think, that we ought to go on with the enquiry, beginning his book, and reading it through; I think I told him, but I cannot be answerable for every word so long ago, I told him, Mr. Baillie, you have, by a letter you have presented to the court, (for he had presented a letter, in which he objected to the committee as an illegal tribunal); when Mr. Baillie wished us to go on, I said, we the committee cannot proceed in that manner; we will go on in what way we think the right way of proceeding; we cannot go on in your way; because if we do, there are charges must come against the directors; you object to our sitting where there are charges against ourselves, therefore we cannot go on in the way you prescribe; we have thought this the best mode; and we think right to go on in our own mode; we will not agree to it.

I understand Mr. Cowley was looked upon as counsel for Mr. Baillie?—They both, I think, said he was not a counsel, but a friend.

But in the same situation to Mr. Baillie, as Mr. Morgan to the others?—Yes.

Do you remember Mr. Cowley's asking Mr. Adam, the architect, whether all the alterations appeared to be necessary repairs?—I don't remember that; I remember Mr. Adam's attending.

And recollect his giving his general approbation?—I do; but that is all stated in the report.

The report is stated in a different manner from what I wish to examine you to.—I don't recollect, particularly, what passed, relative to Mr. Adam; I remember his being there.

I will put a question may bring it to your recollection; do you remember that Mr. Cowley was, at any time, ordered out of the room?—I don't remember that, indeed.

That he should withdraw?—I don't recollect that; and rather think that did not happen, because there was a committee appointed, I remember, to go and view some apartments, and Mr. Cowley attended Mr. Baillie: I don't recollect his being ordered to withdraw.

Did captain Baillie introduce a short-hand writer to take minutes of the proceedings?—Yes, he did.

Was not that writer ordered to withdraw?—Yes, he was; I would not permit a short-hand writer; at least the committee would not; I gave my opinion; I did not think proper to have a short-hand writer.

What was the reason you objected to him?—I thought it improper; I did not think it proper to have a short-hand writer to publish, perhaps in the newspapers, very unfairly, every thing that passed; in the first place, I did not know the gentleman; I did not know whether he would take the minutes down fairly or not; and as there was a clerk to take

the minutes down, I did not think it right to have a short-hand writer.

Who was that clerk that did take the minutes down?—Mr. Ibbetson, the secretary's clerk; he attends at the board of directors; he is the under secretary.

Was not Mr. Ibbetson concerned in the charges?—Certainly.

I think you said it was his clerk that took minutes?—Yes.

You said you did not think it proper to allow the short-hand writer to take notes; don't you recollect Mr. Everest took notes?—Mr. Everest and Mr. Ibbetson both were at the table; likely they did take notes.

Will you explain why you permitted persons concerned on one side to take notes, and not permit Mr. Baillie to take notes on the other?—Mr. Cowley was permitted and did take notes; I understood one person was sufficient to take notes.

There were two persons did take notes on one side?—They were writing at the desk; but I don't know what use they made of their notes; I have never seen them.

Why did you refuse Mr. Baillie to have a person to take notes for him, and permit two on the other side to take notes?—I saw Mr. Cowley take notes for Mr. Baillie; I thought one person sufficient to take notes; I permitted the gentlemen belonging to the Hospital, Mr. Ibbetson, and Mr. Everest, the solicitor; and they had been used to be in the room when I attended the directors; therefore I did not choose to turn them out: I did not order them to stay.

I beg you will mention whether the committee examined into the infirmary of the Hospital?—They did not; and I will tell the House why they did not; Mr. Baillie would fain have had that matter enquired into, and come in as a charge against the surveyor, for building the infirmary improperly; the first thing we enquired into was, to know by what authority the surveyor built it; we found that he had built it by a plan approved of by the directors, and recommended to the general court, and ordered by the general court to build it according to that plan, in a masterly manner; therefore I told Mr. Baillie if there was any fault in the infirmary itself, it was a fault in the directors, and not in the builder; and that he had said that it was improper for us to enquire into charges against the directors; therefore I would not permit it to be visited.

Was Mr. Mylne examined relative to the state of the infirmary?—Yes, he was, but against my inclination; for I would not permit his being examined; the committee were for it, but I was against it; for I thought it to no purpose to enquire into the state of the infirmary; if any thing was wrong, it was a charge against the directors, and not against him.

The committee, then, did enquire into it?—They examined Mr. Mylne.

But did they go to examine, themselves, the state of the infirmary?—They did not.

How far was the infirmary from the place where they were sitting?—Two hundred yards, perhaps.

Did captain Baillie desire that they would?—He frequently desired it.

Was not Mr. Mylne, as he was examined, one of the persons that had complained against captain Baillie?—Yes, he was.

Could Mr. Cust think him an impartial evidence?—No; I said I was against it; the committee ordered it; but certainly he was a person having charges against him; therefore, with respect to myself, I did not think him a proper evidence.

Then, in that respect, your opinion is, the committee did not do right?—I did not think it relative to the point the committee were to enquire into; and therefore I did not think it right to enquire at all into it.

Is there a report in the committee that captain Baillie's charge relative to the infirmary is not well founded?—Yes, there is such a report; and the report is against the surveyor, that it is not well founded, as far as relates to him.

And that without going to examine the place upon the spot?—Yes.

And taking the examination only of the person himself concerned?—The charge against the surveyor was, that he had built it himself, as if he alone had undertaken to build it; when it came to be enquired into, the plan was ordered by the general court; therefore we thought it no charge against the surveyor.

Had not the committee the plans of the infirmary before them?—No, I think, not the infirmary; we had the plans of the Hospital before us; and I am pretty sure we never had the plan of the infirmary before us; because, finding it was ordered by the general court, upon a plan, we were of opinion, that the surveyor was not answerable, if the plan was a wrong one, if he had built it according to the plan.

But was not that plan before the court?—I don't recollect whether it was or not.

It is [qu. not] a great distance of time; be so good as to recollect.—I cannot be sure; I rather think it was not; I am not sure, whether there was not something pointed out as if the works were different from the plan; I think I remember something of that; but it is at such a distance of time I don't now remember it.

That the works were different from the plan?—Some of the apartments different from the plan; it is a long while ago since this infirmary has been built; it has been built ten years; there being no complaint before of its being bad, and one of the things made us not examine so much, is this, there are articles of instruction; the lieutenant-governor, when he sees any thing wrong, is to call a council to make his complaint; and it is to go to the proper place to be remedied; I believe the

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Admiralty; this infirmary having been built ten years ago, and it appearing to us that it was built by order of the plan, from the Hospital, we thought we were not to enquire into it.

But there was some complaint, you say, that the building was somewhat different?—Yes.

How were the committee to know that, without going upon the spot to verify it?—I think I remember something of a plan being laid before us, because the objection being made, that there was something made that was not according to the plan, therefore, I thought if we saw the plan it would be the same as going to the place.

Don't you know there are large places allowed for the officers of the infirmary that do not appear in the plans?—No, I don't, I did not particularly enquire into that.

When you examined into it, who were the persons that Mr. Morgan called to disprove the parts in captain Baillie's book? Were they the persons concerned in it?—Yes, I believe they were in general; unless your lordship will state any thing particular, I cannot tell; in a general way they were called upon.

I don't mean merely to deny the fact, but were not they called upon to give evidence in the case?—They were called upon to know, whether the facts were true, and then brought evidence to support their assertion.

Was not their own evidence taken down in the minutes?—Yes; I am rather apt to think, that what they said was taken down in the minutes.

Was captain Baillie heard as an evidence in his own cause?—I forget; he was called upon to prove the charges, but I fancy he was to produce evidence to prove them, but Mr. Baillie's conduct upon many occasions was so very irregular, I will give you one instance; I remember there was a charge against the rev. Mr. Cooke, that he had bought his place, I think under the sanction of the first lord of the Admiralty; we thought this a very heavy charge; we called upon Mr. Baillie to prove it. Mr. Baillie, in a rude manner, said, you are an illegal tribunal, I will have nothing to say to you; I will give just what proofs I please, and will examine into it in another place; I will give you no proof of it here; then we set it down as not proved; and he often refused to give proofs, but wanted to go into the abuses of the Hospital, and not to enquire into the several charges contained in his book against the several officers, as far as they related to the officers; we went into the abuses; there were a great number of abuses entered into; under the head of Mr. Godby, all the abuses were examined into; where the directors were concerned, there we told him we were not proper persons to examine into it.

I understand Mr. Baillie was not admitted an evidence in his own cause?—I think not, we heard what he had to say, but whether it

was put down in his evidence or no, I cannot say.

But on the other side, the other gentlemen's evidence was taken in their own cause?—I will not say always, it was sometimes taken, I think.

Do you recollect that captain Baillie desired some letters complaining of the state of the Infirmary might be read, and Mr. Morgan objected to it, saying, he would not suffer his clients to produce evidence against themselves?—It is very likely it might be so, I don't recollect it particularly; I remember something of an objection made by Mr. Morgan, of his clients not producing evidence against themselves, but I am not sure whether it was there or not.

Do you recollect whether those were letters addressed to the directors, by the physician and surgeon, and referred to Mr. Mylne for his opinion?—I don't recollect that.

Do not you recollect any letters addressed to the directors, by the physician and surgeon?—No; I don't recollect it; I don't say it was not; it is likely there might be, but I don't recollect it.

Did not the committee refuse to hear the evidence of pensioners upon a great many points, when produced by Mr. Baillie?—Yes; and I believe I was the person that objected to it; the pensioners were examined upon two or three occasions; I think there were four, five or six of them, as well pensioners as nurses, upon some occasion, and the account they gave, was so very contradictory, and there appeared so much ill nature on both sides, so much party prejudice in the Hospital, that I myself was of opinion, they were not proper to be called upon any more, and I did object, I think, to some of them; and I believe some of the committee were of a different opinion; they thought they ought to be called.

You were of opinion then, that the pensioners were not the proper persons to give evidence of grievances?—I do not know what it was for, but if it had been to grievances, I think I should have thought them proper persons to be examined to that; but as I said before, their accounts were so contradictory, I thought it to no purpose to call upon them; if your lordship will tell me any particular fact to which they were to be called, I may recollect it.

Don't you recollect, that the evidence of the men, complaining of a great nuisance of a drain running through their wards, were refused to be heard?—I believe they were; this ward is in Mr. Ibbetson's apartment; if I remember right, it appeared to us, that this apartment was ordered by the directors and the general court of commissioners, and therefore it was a charge, if any, against the directors, which Mr. Baillie had protested we could not go into; besides that, I think that captain Allwright, if I remember right, was one of the evidences that was produced, either upon

that or some other occasions, and it appeared, that this drain, whatever it was, was a thing that had lasted ten years; I asked him, whether by the fourth article of his instructions, if he met with any nuisance, he was not to complain of it to the council, he said yes;—why then have you complained of it? no, he had not; why then, how can you come to complain to us, of a thing that happened ten years before, whereas, if you had laid it before the council, it might have been remedied, and by your instructions you ought to have done it.

My question is, Were the pensioners refused to be called in upon that occasion?—I think it likely they were, for the reason, because the directors were concerned, we did not enquire where they were concerned, not thinking ourselves competent.

Did it not appear to the committee, that one of the witnesses was punished, for the trifling offence of not taking off his hat to Mr. Cooke, the chaplain?—No, I don't recollect that.

One Gough, a pensioner?—I don't recollect that, indeed; I don't remember at all that it came before me.

Don't you recollect having said any thing upon that subject yourself in the committee?—I don't recollect it, indeed.

Don't you recollect having said that it had a very disagreeable appearance to be done at so particular a time, and that you were sorry it had happened?—No, I don't; it is possible I might say so, but I don't remember it: I remember there was some complaint of Mr. Baillie's, that the evidence was brow-beat; perhaps it was upon this occasion that this man was punished, and it was said that he was punished for some other offence: and I remember, at Mr. Baillie's request, several people were called in, several of the officers, and told, that if there was any brow-beating of the evidence, or threatening, or menacing, that the committee would take particular notice of it; for we desired all the evidence might be free and fair; I remember that was done at Mr. Baillie's own request; I think I might take notice of it, but will not pretend to say.

Do you recollect a proposal of calling in twenty of the men then on guard, as a fair and expeditious mode of ascertaining whether the complaints stated really existed?—Against which of the officers was the complaint made; because, if it was against the directors, we thought it wrong to enquire. I told Mr. Baillie, don't interrupt us in our mode of proceeding, and when the committee has done with that mode of proceeding, if there are any grievances that still remain, I, for one, think they ought to be redressed; and I shall, if I sit till Christmas, I shall certainly give my vote for the committee sitting to redress all the grievances, but don't interrupt us now in our mode of proceeding; it is likely that might be one of those things that I thought it better

to postpone till we had gone through our mode of proceeding; I cannot pretend to say.

If I understand you right, you said you thought all these complaints were to be examined into, though the committee should be obliged to sit till Christmas?—Not his complaints; I did not think the committee could examine into his complaints; but I thought all the grievances then subsisting ought to be examined into and redressed, whether made by Mr. Baillie, or any body else; and I would have sat till Christmas for redressing them, if the committee had thought proper so to do.

Do you not recollect a proposal to take twenty men that happened that day to be upon guard, as a fair and expeditious mode of ascertaining whether the complaints stated really existed?—I think it is very likely to be so; and if I objected, it was to the time; that this was an improper time, and interrupted our proceedings.

I am not asking as to the time, but whether such a proposal was made?—I think I remember something of it.

Was it not pretty strongly urged by Mr. Baillie?—I dare say, if it was made, it was strongly urged by Mr. Baillie; I have no doubt of it.

Did you object to it?—Very likely; I objected for one: I remember some proposal was made; sir William James thought we ought to enquire into it then, and was of opinion we should take six, eight, or ten pensioners that were passing by to examine into it; that was his opinion; and if I differed, it was as to the propriety of the time.

You thought it ought to have been done?—If it was an abuse.

Whether it was an abuse or not, would turn out upon the examination?—I thought enquiry into all abuses were to be made.

And the proposal that was made by some gentleman, and strongly urged by captain Baillie, that the twenty men upon guard should be taken and examined as indifferent men, and that you objected to that proposal only as to time?—I cannot say that, unless I knew when it was; what day, I cannot take upon me to say at this distance of time: I remember some proposal made by Mr. Baillie to examine men, and my objecting to it, and sir William James differing in opinion with me.

Was that ever done?—No, never was.

Was there any enquiry into the state of the linen?—Yes; I think a very full enquiry into the state of the linen, and we sat upon it, I think, two or three days.

What was the result of that enquiry? Was it that the charge was made out?—May I refer to the report? I cannot take upon me to say what the result of it was; it is stated in the report.

Did it not appear to the committee that a great number of shirts and sheets then in wear were short of the standard allowed by the

establishment; and that the whole deficiency amounted to a great quantity of linen?—I believe it did not appear that there was any deficiency, because I understand, from the mode of doing it, every shirt may not be of the same size; but there was no loss to the Hospital by it; there were a great many of them appeared to be very old linen; and it did not appear to me, that this linen might not be cut since taken off the beds. Mr. Baillie produced it all himself; they were not taken off by order of the committee.

Were there any men taken promiscuously to examine it?—A great many were examined of the new linen, and all appeared of the proper sizes; this was a basket of old linen.

Would it not have been a fair method, to have taken the first 20 men upon guard to examine into this?—I cannot pretend to say, whether the 20 men upon guard were to that point; I beg leave to refer to the report, for I cannot pretend to carry all that in my head: I know the linen was enquired into very fully.

Did it appear that the steward was allowed to cut the linen of the pensioners shorter or less than the standard allowed?—I beg to refer to the report.

I believe the report states shortly, that the charge was groundless. But I ask, did it not appear that the steward had cut the linen shorter than the standard allowed?—I beg that the report may be referred to; your lordships have it upon the table.

Did it not appear to the committee, that there was no standard adhered to in making up the linen?—Your lordship has the report upon the table; I could soon turn to it, if I had the report; because I cannot recollect it.

[The report shewn to Mr. Cust.]

Did it appear that there had been any standard, by which the shirts and linen had been measured, previous to the enquiry?—That I don't recollect; I know there is a standard in the books.

I do not doubt that, that it is in the books; but was that standard ever adhered to?—That I will not pretend to say.

Did it not appear, that the standard was not adhered to?—I should think it did, in some instances; because their shirts were under the standard certainly.

Why, in the report, could the committee say that that part of captain Baillie's assertion, that the standard was not adhered to, was false?—It is unfairly stated; the report says, unfairly stated by captain Baillie; and then they say, it appears, that the linen cloth is cut up by the civil officers' clerks' wives; that seemed to be the charge; that, we said, was not true; because we stated that there is a standard.

Whether there was any enquiry made into the state of the shoes?—I think there was; I will look. (Refers to the report.) Here is another thing that is stated in the report. "If, however, any complaints had been made

to captain Baillie, of the shortness of the shirts and sheets, of bad washing, &c. it does not appear that he has taken the proper notice of them, by laying them before the council, agreeable to the 17th article of the printed orders, for the regulating and better governing of the pensioners, &c. Which it was his indispensable duty to have done."

I want to see if any thing is said about the shoes?—I am sure the shoes were examined into, but I don't see any thing in the report relative to it; I don't see any thing in it relative to shoes; I know we examined into the shoes, and examined relative to the nurses' clothes, and found they were not so good as they used to be.

Is there any report made about these clothes?—I don't find it in the report; I know we examined into the shoes; and some that were produced were found to be very bad.

Does that appear to you to be an impartial report, that does not take notice of several grounds of complaint that were proved?—I don't know how that is; I know we examined into the shoes.

Does that appear then to be an impartial report?—I see that shoes and women's clothes are omitted.

That report then, as far as that goes, is defective and partial?—It is defective, as far as it goes, with regard to them; they ought to have been put in.

Was there any enquiry into the state of the brewhouse?—Yes; I think there were enquiries made; but it appeared they were grievances that had been remedied, and no complaints made afterwards; I think I remember it; I don't know where to look for it in the report, or else, I dare say, it would be found to be there.

Was there any enquiry made into the abuses of the charity stock, as charged in the printed Case?—I am not sure whether it was in my time made, or no; I think not while I sat.

Was there any enquiry into the danger of fire, from the tailors' shop?—No; there was nothing said about the danger of fire.

It is in the printed Case.—I am sure it was not enquired into, while I was there.

You, I think, attended six meetings?—Yes; I did.

And the seventh you did not?—The seventh I did not.

In the course of these meetings you said, that the committee might sit till Christmas; that you thought it ought to do so, to enquire into abuses that were then existing?—Yes, that were then existing; if Mr. Baillie had any thing to say, after we had gone through.

Did you attend at the seventh meeting?—I did not.

Did you expect that, at that meeting, the committee would be concluded?—I did not; I was obliged to go upon business in the country, as I told your lordships before; when I returned, I waited upon, I forget who, I think

Mr. Ibbetson, and first heard from him, that the committee was put an end to; I was surprised at it; I waited then upon Mr. Barker, sir William James, and Mr. Wells, and they told me the reasons of it; and they have given me very satisfactory reasons why they did not act improperly in putting an end to it.

You did not expect it would be over in one day?—I did not.

Do you recollect, that you promised to captain Baillie, when Mr. Morgan had gone through the charges which he had pointed out as against his clients, that captain Baillie should proceed to call evidence on matters which had not been investigated, which had not been fully entered into?—I don't recollect any promise; I did not think myself authorised to make any promise to Mr. Baillie; when Mr. Baillie wanted to produce evidence, and hinder our proceedings, in what we thought the proper, regular mode of proceeding, I said, don't interrupt our proceedings, when we are done, if there are any grievances, if you have any thing to say, I shall be for sitting upon them; I don't recollect making any promise in the way it is stated there.

You said it as chairman?—I said it sitting there.

Was that contradicted by any one?—No; Mr. Baillie seemed satisfied with that, and then went on with the business.

Do you imagine that Mr. Baillie relied upon what you had said, that he was to produce his evidence?—I suppose he did; he relied only upon me as one; I was only one in the committee; he did not desire to have the sense of the committee taken.

Was any objection made to it by any body, at the time you said so?—None at all.

Do not you particularly remember having repeated this promise, or whatever you please to call it, when the gowns of the nurses were shewn to you?—I think it is likely; I said, several times, Mr. Baillie, do not interfere in our proceedings now, we are examining into the complaints against you; and when we have done, though you protest against us as an illegal tribunal, yet if there are any abuses in the Hospital after that, we shall think it right to enquire into them.

Do you remember, that the protection of the committee was claimed for the nurses who had been threatened?—Yes.

To have the protection of the committee, upon some suggestion, that the nurses were browbeat or menaced?—I remember the committee was exceeding angry about it, and said, they would not admit of any such thing; and desired, if any threats had been used, none were proved, they should have every protection to give their evidence; and the nurses were told they should.

Did the committee say that, without having any authority for imagining there had been some menaces?—No other authority, I believe, but what Mr. Baillie said.

Was that denied by the people of whom it was said?—I don't recollect; the committee said, the nurses ought to know that they were protected by the committee.

Do you recollect any instances of improper or insulting behaviour, to the lieutenant-governor, before the committee?—There were two instances; particularly, I remember, the rev. Mr. Cooke and Mr. Mylne; there were quarrels among them constantly in the room; they behaved very indecently to the committee, on all sides; we could hardly keep them quiet; they abused Mr. Baillie, and he them. Mr. Cooke, I recollect, abused him; and Mr. Milne thought himself ill used, by the charges brought against him, and he did abuse him, in the committee, several times. There were great indecencies on all sides; we could hardly go on with the business.

Where did that originate?—I remember Mr. Cooke called Mr. Baillie blackguard, or rascal.

Mr. Cooke, the chaplain?—Yes.

Calling the lieutenant-governor blackguard?—Yes; blackguard, rascal, or scoundrel, or some expression that was very indecent; and I thought so at the time.

With regard to Mr. Mylne; what did he say?—There was some expression of the same sort in Mr. Mylne, that I thought he ought not to have made use of in the committee, and something of the same kind; then Mr. Baillie made use of insulting expressions to them, at the same time; in short, they quarrelled among themselves.

That is what I enquire after; with whom did that originate?—I don't recollect; I remember telling the rev. Mr. Cooke, that he behaved very indecently to the committee.

But should you have been angry with Mr. Cooke, if Mr. Baillie was the aggressor?—He behaved very indecent to us; he said we were a partial committee, an illegal tribunal, he would have nothing to do with us, we were partial; I could hardly be restrained from turning him out of the room, he behaved so rude at particular times; I appealed to Mr. Cowley; I said, you, Sir, are a moderate man, let Mr. Baillie put his affairs into your hands, we shall then go on with our enquiry, and soon get rid of it; I must do Mr. Cowley that justice to say, that he behaved properly.

Did those words, illegal or partial, seem to apply to the committee, as to their conduct in the enquiry, or to their being directors?—To their conduct in the enquiry. I will do Mr. Cowley the justice to say, that he did never, while I was chairman, make use of any indecent expressions whatever, but behaved very moderately, and with great propriety during the whole time.

Whether, as a director of the Hospital, and as a member of the committee, you don't know, that many of the charges contained in the Case of the Hospital, as laid before the general court, are substantially true?—That is a question, I am sure, I cannot answer, that

they are substantially true; they may be substantially true many of them, and be remedied; I am sure the charge about the meat is remedied; so many of them might be true, and be remedied since.

I do not mean those that have been remedied since, but those that then existed?—We did not examine properly into them.

The linen?—I don't think the charges of the linen at all proved.

The shoes?—Nor the shoes; the fault did not lie there, it lay with the directors, if there were any fault in their contracts, therefore we could not enquire properly into it, we did not think ourselves authorized to do it.

Whether the complaint that the abuse existed is not substantially true?—I do not think we enquired fully enough into it, to say there was, some enquiry about shoes I remember.

Did I understand you right or wrong?—We made enquiry into the shoes, and some of them appeared to be very bad, but there were reasons given for the badness of the shoes; they were satisfactory reasons, but I don't now remember what they were.

What could be the satisfactory reasons that could be given, why the shoes were bad?—That I cannot tell; there were very few that were bad; I don't remember what the reasons were now.

Do you conceive there can be a satisfactory reason given, why some of the shoes of the Hospital should be bad?—If complaints were made and not redressed, to be sure that is wrong, but I know that they were bad.

And the gowns of the women?—They were not so good as they had been formerly; but then, that must have been the fault, I should think, of the directors, in treating for these gowns, or not giving the same price; I cannot tell how that was, they were not so good as the others.

Do you think that it is true, that there have been several landmen admitted into the Hospital?—Certainly.

Do you look upon that to be contrary to the charter, or what?—That is in the report that came under the head of the charge against Mr. Godby, the steward; the charge against him was, that he had been illegally appointed, being a landman; the committee have reported what appeared to them upon that head. I believe, I am sure we reported this; when captain Baillie stated it, we were of opinion we were not judges, what was legal or illegal, and we did report it; it stands in some part of the report, that we did not think ourselves competent to enquire into that, because it was stated as an illegal thing. I don't pretend to judge of charters; if I was to judge, I should much doubt, whether many of the gentlemen said to be officers, are officers within the charter; but that there may be landmen appointed to offices; but that I am not competent to judge of; it is a matter of law.

Whether women have not been appointed matrons, that are not widows of officers?—

Yes; I think that did appear; one in the time of lord Egmont, and one in the time of lord Hawke.

Did that appear to be contrary to the charter or not?—That I will not pretend to judge of; that is a matter proper for your lordships to judge of; I beg not to give an opinion about it.

I ask your opinion, what you judged as a director of Greenwich Hospital, whether you did judge?—Not having the appointment of them, we formed no judgment of it.

Did you ever read the charter?—No, never read it any further than as contained in captain Baillie's book; I never saw the charter.*

Whether there has not been a great deal of money spent in making ornamental alterations and improvements in the Hospital, and in cleaning of pictures?—There has been none made but what was by the order of the general court; we looked upon the act of parliament that gave the Derwentwater estate, gave it, in the first instance, for improvements of the Hospital, and to complete it according to its first plan, and then should go to the uses of the charity; and that money has been laid out every year for a number of years, but it is not yet completed.

Whether the price for the shoes and stockings of the pensioners has not been reduced?—I don't recollect, that will appear from the minutes of the committee.

Do not you know that the price now given for shoes and stockings has been less lately than formerly?—I don't recollect; it is in the proceedings of the directors, if it is so.

Would you think it proper for the directors to reduce the price of shoes and stockings for the pensioners, at the time they were laying out great sums of money for cleaning pictures, and for ornaments?—I don't think they ought, so as to make the shoes and stockings bad.

Do not you know that the men have complained of their shoes and stockings?—There are complaints, and always will be in such a number of men; but the generality of the pensioners don't think, I believe, that they are worse than they used to be.

Was any enquiry made into that regularly?—I don't recollect whether there was or not.

But the shoes you remember?—I remember something being done about the shoes, and some were bad, one or two pair that were brought.

Was there but one or two pair brought?—I don't think that there were more than half a dozen complained of.

Was that examined into any further? Were any number of pensioners called to examine,

to see if there were any more?—I remember, by the examination that was made into it, it appeared, that a few pairs were brought in as bad, out of a great number that were brought in.

Did not captain Baillie propose to bring in 20 men out of the guard, to examine into that?—I know it was proposed to take 20 men out of the guard, but whether it was for the shoes or no I cannot say.

Don't you know, that it was principally by the means and activity of captain Baillie, that the butcher's man was transported for stealing the meat?—Possibly it might; Mr. Baillie, in that business, was very active, and the directors were very active likewise in it; but that is an old thing, of long standing, and I don't remember it without referring to the books.

Do not you know, that captain Baillie was active and instrumental in convicting the contracting butcher?—I have heard he was instrumental in it, and so were the directors; he was instrumental in it as a director; I understand the moment the complaint was made of the butcher, the directors ordered their solicitor to prosecute.

Was not the contract renewed with that butcher during the pendency of that prosecution, and after he was convicted?—I believe it was; we have great difficulties to know what to do in these cases; the same thing has happened since this enquiry; there has been a contract made, at which I happened to attend; at the board we were under difficulties, we did not what to do, and agreed with this contracting butcher again. The officers of the Hospital may prevent bad meat by the contract; they may return it back, and go to market and buy fresh meat; we are obliged to contract with the lowest that offers; and, in consequence of that, any person under a feigned name may come, and bid; if he is the lowest price, we must take him; we don't know the person; we were under difficulty how to act; the last time there was an advertisement put in for three weeks or a month, to serve us for six months or twelve; I happened to be at the board, there were only two persons put in, and the difference was a saving to the Hospital, in the year, 350*l*. We could not consent to contract with a man, and give him 350*l*. more than another. I was not at the board when that was executed; but I was at the board when the contract was made with this man, who I understand to be the son; that was made the other day, and if we had not done it, we must have given 350*l*. from the Hospital. I do not know how we can act otherwise, unless we had a discretionary power to take other persons; and that would be attended, in my opinion, with more mischief.

Do you think the directors have not a discretionary power?—They never exercised that discretion but once, and that was in the Painted-hall; if they took the lowest bidder,

* Mr. Cust has been many years a director of the Hospital, and his warrant as such, says, "You are to govern yourself according to the charter," which every director is or ought to be in possession of; yet it appears he never had the curiosity to read or enquire after it. *Orig. Ed.*

it might be ill done, and they would not have an opportunity of finding it out; but with respect to the meat, it is the officers' duty to see the meat is good, and we could not find it out in the Painted-hall; and therefore, I was one of those that, with respect to the Painted-hall, thought it not right to advertise when that matter was taken up; but it was not done in any other instance.

Am I to understand from you, that there is a discretion in the directors, not to advertise to take the lowest bidder, and in the case of the Painted-hall they used that discretion?—I don't know whether we did not take that matter wrong upon ourselves.

What restrains you from having that discretion? Do you know of any law or usage to the contrary?—I know of no law; the fear of having greater jobs in the Hospital, have always induced them to take the lowest bidder.

Nothing has restrained them but discretion?—Nothing but discretion.

The reason you have given why the Painted-hall was not advertised, was, that being done at the lowest price, it might be done by dishonest persons?—Yes.

In what light did you look upon Mr. Mellish after having been convicted?—In an improper light; but I don't know how one can help taking him; if Mr. Mellish had substituted any person else, and he had been the lowest bidder, we must have took him; so it appeared to me.

I understood you that it was in the discretion of the directors?—I should have thought that a very improper thing for discretion; because it is in the power of the officers to prevent any abuse, because they may return it, and go to market for fresh.

But did not that abuse exist for a long time?—It did.

Then that guard was not sufficient for the purpose?—But I hope it will be in future, or some others found out, but I don't know of any.

Don't you know there were many complaints and disturbances among the men about the beer?—I said before, I thought that an old affair that was taken up by the civil officers; it was their business to do it, and it was remedied. I forget whether we went into it or not, perhaps we read some of the minutes.

Do you mean to say, that the complaints contained in captain Baillie's book, that had been remedied, were admitted to be true?—Yes, I should suppose they were.

Do you recollect having said, at the committee, that though captain Baillie's zeal for the pensioners might sometimes carry him too far, yet, upon the whole, his conduct was meritorious, and ought to be considered?—Not meritorious, and ought to be considered; I never was of that opinion; I am pretty sure I never said that.

Do you think it is meritorious?—In what respect think so?

As having done justice to the pensioners.—I believe that Mr. Baillie has done a great many good things in the Hospital; and, in many instances, has done his duty as a very good officer; and so have other people as good officers; I have no doubt about that; I never heard any complaint against Mr. Baillie; I have been sixteen or seventeen years in the Hospital; I have not attended so often as I ought to do; my business was so much, I have not attended my duty so much as I ought to do; but whenever I have, I have never seen any thing, on the part of Mr. Baillie, that was reprehensible, any more than one of the rest; so much did I conceive Mr. Baillie a good officer, that when this book came out, I own I never was so much astonished in my life; when I saw all these virulent complaints against those officers with whom he seemed to sit in such friendship; I have often been in his company; I never heard him complain of them; and I was astonished when I read this book; but as an officer in the Hospital, I never heard any complaint against him.

Recollect, whether you did not say, at that committee, that captain Baillie, though his zeal for the pensioners might sometimes carry him too far, yet upon the whole, his conduct was meritorious, and ought to be considered?—I could not say that, when I consider all these charges as unjust and malicious, in themselves, against the officers, as they appear to me to be.

Did you say so?—I think not; I don't recollect that I did.

What were the proceedings, after this report, in August, at the general court?—At the general court; we met, and I was chairman of the committee; having delivered the report, I thought it my duty to suggest to the court, that I thought there ought to be some proceedings upon it; and accordingly I stated to the court what appeared to me upon the report; and I made a motion, that the charges against the several officers, were in my opinion, in general, malicious and void of foundation; and that report was agreed to by the general court; then another gentleman in the court made a motion for the removal of captain Baillie; which I agreed to.

What gentleman?—Mr. Hicks was the gentleman that made that motion.

I think you said you were not present at the last day?—I was not.

Then how could you sign a report of a committee, and afterwards make a motion to remove captain Baillie, for complaints which, you say, were malicious and ill-founded, when you had not yourself attended at the proceedings of the last day?—Both of us signed; therefore I consider my name as only going to the six days that I attended; and in those six days that I attended, there appeared to me sufficient ground to say, that the charges against those gentlemen were malicious and void of foundation; indeed I thought so, and think so still.

Then your signing does not go to the seventh day?—No; I considered it only as to the six days in which I attended.

Then you did not take upon you to say, that on the seventh day the charges were malicious and ill-founded?—No; I only considered it as confined to the six days.

What was the motion made afterwards by Mr. Hicks?—A motion to remove Mr. Baillie; and it was agreed to by the court; the lords of the Admiralty afterwards did not remove him, but suspended him; and I understood it to be, because there was a trial depending in a court of law; and when that trial was over, and nothing in it appearing to vindicate captain Baillie's character; for we understood the trial (but I was not present at it) that it was improperly brought; first, because the book itself was not a published libel, but a memorial, complaining of abuses; but I was not present at the trial; after that was over, there was a meeting of the Hospital, and at that meeting it appeared to me, at least in the debates upon it, that the Hospital suffered very much for want of a lieutenant-governor; it is an office of very great importance in the Hospital, and therefore we agreed upon another letter or memorial to the Admiralty, to desire, that now the trial was over, if that had been the cause of the suspension of Mr. Baillie, we desired Mr. Baillie might be removed, and another lieutenant-governor appointed.

I think you said, that when captain Baillie protested against the court of enquiry, he did it because they were directors?—Directors improper to enquire into their own conduct.

I think you have stated, that you agreed with him in that, that they ought not to enquire into their own conduct?—I did.

And therefore nothing relative to that was enquired into?—Nothing was enquired into; but there is a report upon it. [Reads.] "In regard to what concerns the directors, your committee found themselves in a very delicate situation, to have referred to them the consideration of matters in which they themselves were supposed to be interested; they, therefore, thought it necessary to convene all the directors they possibly could, captain Baillie excepted, who, by way of answer to the charges, have resolved." So these are to be considered only as answers to Mr. Baillie's book, without proof on either side; the resolution made by themselves as an answer to the charges.

Then, though the board of Admiralty directed that the several charges in captain Baillie's book should be enquired into, that committee did not enquire into those that concerned the directors?—Certainly, they did not.

Am I to infer from thence, that as far as appears by that report, that there is no disapproval of any thing captain Baillie has said relative to the directors?—Certainly; unless the answers they have given is a refutation of it, certainly no proof at all.

Then, upon the other point, a letter was written to the board of Admiralty to desire captain Baillie to be removed?—Yes, it was.

Whom was that letter signed by?—I believe by all the directors; I know I signed it for one.

Did not the committee also refuse to examine into any thing that concerned the appointments of the Admiralty, or of the first lord of the Admiralty?—They did; they did not choose to do it; they thought it too high a court to enquire into; and they are not enquired into.

Therefore any thing stated relative to them may be true?—It appears to me to be rather, though a very small one; but it is a small libel against all the great officers of state, for not attending their duty as commissioners; that was not enquired into; there were some libellous charges against the governor, that were not enquired into; and against the first lord of the Admiralty, and all the other lords of the Admiralty.

None of those matters that respect a complaint against the court of directors, the Admiralty, or first lord of the Admiralty, the general court, and governor, were enquired into?—They were not.

I think you have said, in answer to a question that was asked you, that there were matrons appointed, that were not properly appointed, not being the daughters or wives of seamen?—So I have understood.

Whether it appears that any of those were appointed by the person who is now first lord of the Admiralty?—It does not; I said I understood lord Egmont was one, and lord Hawke the other.

Viscount *Dudley*. I would wish to know of you, whether you do not think picture-cleaning is a very delicate and nice business?—A. I do.

If you had pictures to clean, whether you would not enquire for men of the greatest note in this country; or whether you would employ those that should offer to do it cheapest? Don't you think that a man that offered to do it cheap, might probably spoil your picture?—I do think so.

If the Painted-hall had been spoiled, do you think they would have got much by having it done by a cheap hand?—I don't.

Whether all the evidence before the committee was taken down in writing?—I think it was; we had a clerk that attended; and whenever I found that he did not take it down, I went on slow, and desired him to take it down; but I will not answer for the clerk's having taken any thing down.

After you had gone through, was it not frequently read over again?—Sometimes; not always.

Was it not, if any member, or the witness himself, desired it?—Certainly; but I am not sure that it was done in all cases.

You were at the appointment of the committee, as a member of the general court; it

is mentioned that the first lord of the Admiralty named the committee, now I desire to know, whether they were named by him, or proposed to the committee, and chosen by them as proper persons?—As far as I remember of that matter, I have stated before, that your lordship (lord Sandwich) did ask Mr. Baillie; Mr. Baillie, you have said there are men of worth and honour attend at the board; will you point them out, because I shall propose to the general court, that they should be the men. Mr. Baillie said, I dislike your proceedings, or something of that kind, and will have nothing to do with it; upon which your lordship desired the list of directors to be read, and seemed very desirous that those directors only should be taken against whom there could be no objection; that I take to be the case.

Was not Mr. Baillie offered to leave out any of those, if he had any objection?—Yes; certainly.

The Earl of *Sandwich*. This that I have in my hand is a letter, lying upon the table, written by captain Baillie to the general court: this is a paragraph in it: “I meant to appeal to a court of all the great and noble personages who are named in the charter as governors and commissioners of the Hospital; instead of which, I was informed by lord Sandwich at the court, that none were summoned at the general courts, but those whom he thinks proper.” This is in the letter; I desire to know from you, whether you heard any such words as those come out of my mouth, that none should be summoned, but those I thought proper.—A. I certainly did not; it is now a great while since, that I should not depend upon my memory, but your lordship did call upon me at the next general court, and then I said there were no such words.

Did I call upon any other persons besides yourself, to ask whether that assertion of captain Baillie's was true or false?—Yes, you did.

Upon how many?—I cannot tell how many.

Did I call upon all the members present?—I think you called upon all the members present.

What was their answer?—The same as mine; that they never heard your lordship make use of any such expression.

Did, at that meeting, captain Baillie own himself to be the writer of that printed Memorial?—Yes; adding, at the same time, that he had not published it, I think; and that it was only meant as a Memorial to the commissioners.

He owned himself the author of it?—Yes; he said he was the author of it.

Whether you ever read the list of the governors and commissioners of the Hospital?—No; I never read it; but I understand that the great officers of state, not by name, but those that are great officers of state, are commissioners of the Hospital.

I suppose you don't* understand that there are a number of officers who are not officers of state?—Yes; there are commissioners of the navy; there are two or three of the Trinity-house, I believe, that do attend now and then at the board that I have seen there; but I don't know who compose the whole court.

The Duke of *Bolton*. Whether you don't think that it was an easy matter to have found seven persons, who were governors and commissioners of the Hospital, that were not directors, to have formed a committee of enquiry, without going to those whom you call the great officers of state?—I very much doubt it; I will not speak positively to that point: I don't think that seven people could have been found who would have attended, that would have made a part in that enquiry.

Don't you know that all the admirals of his majesty's fleet are commissioners of Greenwich Hospital?—I don't know; I did not speak of the admirals; I did not know that they were commissioners.

Suppose they all are; don't you imagine it an easy matter to have found seven of them to compose a committee of enquiry?—Another thing is, would they have attended? that is a mere matter of opinion.

Was there any obligation upon you to attend?—None in the world; I did not desire to be appointed.

Before that happened, who could have answered for you? Is it not a similar case between you and another person? Who, before it happened, could be certain they would object to attend?—We that were appointed were all present; and were asked if we would undertake it; we said yes, and were ready to undertake it now; if you had appointed seven admirals that were not present, (for I don't recollect there was any one there) and they would not have attended, the committee would not have been formed.

Do you know that any others were summoned?—No.

What was your summons?—A particular summons to meet at a general court at the Admiralty.

Did you understand that those that were absent, were not summoned?—So I understood.

I understand from you, that after the fraud was committed by the butcher, he was employed again; tell me, if I am wrong?—I understood it so.

And that there was no authority sufficient to authorise the turning of that man out, if he would undertake to do it for less than another; do I understand you right?—I don't clearly understand your lordship.

You said, I apprehend, that there was no authority for the removal of the man, though you have acknowledged he had been guilty of a fraud?—I did not say that.

I understood you, that he had served the Hospital improperly?—Yes.

That is a fraud?—It is.

But he offering to do it for less than any other person, there was an obligation upon the commissioners and the managers of the Hospital to employ that man so convicted?—Yes; I think there was.

Follow me, and I will give you time to answer to me; if this answer of your's tends to any argument at all, here it lies, that whether the Hospital is well or ill served, if a man offers to do it for less than another, he is to be employed; now is there no such thing as publishing in a gazette, a contract to supply the Hospital, excepting such a person?—Yes; there is.

Then that man might have been excepted?—By name he might.

And, of course, could not have been employed?—You might have excepted him by name; but if he had put in the name of John a Noaks, or any common name, and that man had been the lowest, you would have taken in that man; therefore you could not have excluded him from the benefit of it, though you would have excluded him by name.

Whether or not a man of substance, offering a contract, will not always bear down any other man who attempts to offer against him; his name would have such weight, that an inferior butcher would not offer against that man; and for this reason; because, says this man, if you offer to serve the Hospital with beef at a penny a pound, I will serve them for an half-penny; as long as that man's name continues, you must be sensible that no other inferior butcher could offer against a man of substance?—I don't know what to say to that; we put in an advertisement; there seems to me to be but two modes; either to take the lowest person that offers, or to have it in our power to give a higher price to a man that we can trust; now if that power is granted to the directors, my idea is, the directors would make a great job of it.

Why do you think so?—Because they would prefer a friend; and, perhaps, some of them be concerned in it; it is opening a door for a job.

Then, according to your mode of reasoning, if a man is ever so great a villain, you must employ that man?—Yes; the officers are to do their duty to prevent it.

I think you said, Mr. Hicks moved for the dismissal of captain Baillie?—Yes.

Was Mr. Hicks one of the persons that appeared as prosecutor of captain Baillie, at the committee?—Yes; I understood it so.

Was Mr. Hicks one of the committee at that time?—No; he was not of the committee.* [Mr. Cust withdrew.]

* Mr. Hicks is a servant to the Hospital, as six-penny receiver; and a master, as a director, governor, and commissioner. This is one of the absurdities complained of in captain Baillie's book.—*Orig. Ed.*

Mr. Barker called in.

Were you appointed of the committee to enquire into captain Baillie's book?—I was one of the directors nominated, at the general court, to be of the committee.

Did you attend that committee?—I did attend it twice; the first time I attended it was the first day of May; and when I was last Wednesday, upon this examination, it was sworn at your lordships' bar, that I attended there one hour only; therefore a very improper judge to give an opinion; the person that made that affidavit and declaration, at your lordships' bar, was in my company from ten o'clock that day till seven at night, at Greenwich, upon the committee, except the short dinner we made to return again to dispatch the business; Mr. Cowley I mean; I can bring ten gentlemen now here that were present at the time.

This was the third meeting?—The second meeting I believe it was; the first of May, I was there the whole day; and I was there the 19th of June, when we finished the enquiry.

Then, I am to understand, you attended only two days out of the seven?—Yes; it did not suit me; I came out of the country on purpose to attend; Mr. Cust was gone; I made it my business to attend the second or third meeting, from ten in the morning to seven in the evening; we retired one single hour to dinner, and returned again to business.

Was there any consideration given to the gentlemen that attended that meeting?—No other consideration than spending their own money, and giving up their own time.

Were you desired to attend by any body?—No; I thought it my duty, when my business would permit me, or my absence from the country.

You were not desired to attend by any body?—No; only a general desire to attend as often as we could, to get through the business.

Was that a desire from any particular person?—No; a general conversation among the directors.

And was there no promise given, that the expences should be borne?—I never heard any such thing, nor nobody ever thought of it; if your lordships mean to know the advantages of being a director of Greenwich Hospital, I have been one 11 years; sometimes I have received 5*l.* sometimes 3*l.* for the whole year.

Do you recollect being present at a meeting of the Trinity, at Deptford, on the 15th of June?—If it was a Trinity Monday, then I always attend; that is our annual day; we go then to choose our master, deputy, and wardens.

You don't remember having said any thing there about Greenwich Hospital?—I cannot charge my memory, that Greenwich Hospital was mentioned there.

You did not tell any body there, that your expences were to be borne?—No; it was in a morning I was there; if it had been in the afternoon, after one had had two or three bottles, one might have said such a thing; but I never heard of it, nor ever thought of it.

Inform the House what you thought to be the proper business of the committee?—I presume, to enquire into the charges captain Baillie made in his book, against the civil officers of Greenwich Hospital; we thought that was the duty of the committee; as there were charges made by captain Baillie, in his book, to sundry gentlemen of Greenwich Hospital, the civil officers, and some of the directors, we thought it the duty of the committee to enquire into those charges, to see whether they were right or wrong.

Did you understand that the committee were to enquire into the charges, made by captain Baillie, against the directors?—No; that was impossible, to enquire into a charge against ourselves; we might have been very partial in our own judgment.

You did not enquire into that?—Certainly not.

Did you enquire into complaints against the lords of the Admiralty?—More improper still, to enquire into complaints against our masters.

Did you think you should be partial in that respect?—I hope not partial in any.

Did you think it your duty to enquire into any thing charged against the first lord of the Admiralty?—Certainly not.

Any thing against the commissioners in general?—Surely not.

Were there any points, in captain Baillie's book, that affected those persons?—If there was any charge that affected any single director, we should have enquired into it; he did make some such, we enquired into them, and found them very wrong charges.

But respecting the directors in general, you did not enquire into?—Generals is nothing; when he made them against any particular persons, captain Baillie's charge was read to them, their answers were received, and to the best of my judgment, we gave our opinion after the committee was over, and the report made, which your lordships may see in the report I had the honour to sign.

Did you permit captain Baillie to make his charges in a regular way, and to support them?—He had as much liberty as any person could have; we never stopped him but when the gentlemen differed among themselves, and made use of language very disagreeable; we were sometimes obliged to order the house to be cleared, and to desire them to be more steady when they returned.

Was captain Baillie permitted to arrange his complaint in the manner he thought proper?—He had while I was there, and I dare say he had the whole time.

Did a Mr. Morgan attend the court there?

—He did for the gentlemen against whom Mr. Baillie alleged this charge.

Did Mr. Morgan arrange his complaint, or Mr. Baillie himself?—I don't know; I know Mr. Morgan talked a great deal, and so did Mr. Cowley, captain Baillie's friend, and prevented business going on, when it might have gone on much better.

Did Mr. Morgan arrange Mr. Baillie's complaints, or did Mr. Baillie make them in the manner he thought proper?—I know nothing about their arrangement; I never saw their minutes; I heard their questions, and the replies to them, and gave our report accordingly.

Did you never hear captain Baillie object to the manner in which the enquiry was carried on?—I was not at the first meeting; when I came to the second meeting, I was surprized to see gentlemen who were strangers there; I asked who they were, they said, one was counsel for several officers, and the other gentleman, Mr. Baillie's friend, which we supposed then of the law, was counsel for him; I did say, that if I had been at the first meeting, I would have objected to counsel; we wanted no law, but to come at truth only.

Did you hear captain Baillie make any objection to the court not permitting him to prove his book from the beginning to the end?—No, never; captain Baillie gave the committee a great deal of trouble, by sundry improper questions, or the business might have been done in half the time, and much better.

Did you permit captain Baillie to call his witnesses to prove the charges?—All the charges I knew of.

Did you permit him to call them, in the order he thought proper?—I don't know any thing to the contrary when I was in the chair.

Do you recollect several of the blind men were refused to be called, concerning the removal of the posts and rails?—I remember the complaint that captain Baillie made, that the posts and rails being removed, that it was a prejudice to the blind men, that one had been run over by it; I told them we admitted it to be true, and therefore they need not call witnesses to it.

Did you report that you admitted it to be true?—I cannot remember eight or ten months ago; if I mistake in my memory, I submit to your lordship's goodness to correct me.

Your memory serves you to tell us, that upon the removal of the posts and rails, you refused to call in the blind men, telling captain Baillie you admitted it?—There was a reason given for it; the time they were removed, the accident happened; we told him we had heard the accident had happened, and we admitted it.

Then does not your memory serve you to tell, whether you stated that in the report?—I don't recollect; the report is on your lordships' table; there was an accident happened; we admitted it, I don't say we admitted that it

was wrong to take the posts and rails away, and put others in the room of them; I don't say it was so; we upon the enquiry and the committee were satisfied with it, we admitted the man had received the accident.

Did you enquire whether it was a grievance subsisting?—Certainly we did examine, and it was not then subsisting, but rectified, and in a more safe order than before.*

But did you refuse to hear the evidence of a blind man, on the subject, aye or no?—A blind man could not be an evidence, whether the posts were removed, aye or no; we admitted the fact.

Did you admit the evidence of the blind man, aye or no?—It strikes me now, I believe we ordered the counsel to withdraw, and some gentlemen came in with a report of captain Baillie's behaviour at the door, in order to set them against the court and civil officers; I believe I have that in writing, if your lordships will permit me to read it; the time the committee was debating upon it after the room was cleared, the counsel for the civil officers, Mr. Morgan, and the gentleman that attended Mr. Baillie as his friend upon the examination; their language was very extraordinary, their behaviour prevented the business going on; they were desired to withdraw, and the court to be cleared. Captain Baillie asked if he was to return again; we told him directly, he might do as he pleased; when we were debating this upon their going out, the following extraordinary speech, which had been just made in the room adjoining where the committee sat, by captain Baillie to two blind pensioners in the presence of most of the officers, and in the hearing of a number of pensioners and nurses, which several of the officers were ready to attest, and which captain Baillie, upon its being read, did not materially disavow; "Go my lads, you will not be heard, you may break your necks and be damn'd; you, the lame and the blind, may do what you will for the committee, for you will meet with no redress here." I submit to your lordships, whether after such an affair as this, any gentleman would sit there to do business.

Was this after the committee was finished or not?—No; when the gentlemen were desired to withdraw, that the committee might take into consideration, and go over the evidence, and see if the clerk had entered it properly.

Then I beg to know, whether you did refuse to admit the evidence of the blind men, concerning the posts and rails?—After that, we thought it proper to break up the committee, but we had before gone through every complaint but this; we called in every civil

officer; before we finished the enquiry, we asked them separately if they had any complaints to make, and your lordships will see their answer in the report.

You called the persons accused, to know if they had any complaints; did you call in Mr. Baillie?—He went away after this.

The blind men were not called?—They were not.

You refused to call them in?—After the captain had made this public declaration, what could we say?

Did captain Baillie desire the blind men might be called in to be examined aye or no?—He sent for the blind men, and after the behaviour of some of the gentlemen, when we were obliged to clear the room, and was going to take into consideration what was necessary for the examination of those people, we admitted the posts had been removed, and an accident had happened, and then when the report was brought in, of what captain Baillie had said, it was all over.

I must have an answer, yea or no; did captain Baillie apply to the committee to have these blind men called in?—I believe he sent for the blind men without applying to the committee.

I ask, did he apply to the committee to send for them in to hear them?—I cannot charge my memory; if he did, I believe it will appear in the minutes of the committee.

Was the evidence of Mr. Charles Lefevre refused to be admitted?—I believe Mr. Charles Lefevre had come before the committee, that sat once or twice before; his name was mentioned; the answer was, as the committee before had enquired into that affair, we did not know it was the business of this committee, to take into consideration what had been before the committee before, and under their consideration.

Do you recollect expressing yourself, that it was very impudent for one man to find fault with the conduct of so many gentlemen as the directors?—No, it never entered into my thoughts; captain Baillie will do me the justice I hope to say, that I took his part in one thing that happened there.

What was that?—I believe the rev. Mr. Cooke; his affairs were under consideration, and captain Baillie said very extraordinary things against him, and I believe the other told him he did not speak truth.

Was there any body else?—There was Mr. Mylne, the clerk of the works; he was charged with something very indiscreet, and the language was very disagreeable, and I believe he might return it with a proper resentment, but perhaps made use of a word, but I forget it; these things I wish to forget; the other struck me much, as coming from a clergyman.

Recollect the beginning of that conversation?—I would if I could, they were often loud, and contradicted one another too much for a proper enquiry.

* This is a most extraordinary averment; for, to this day, not one yard of post and railing are put up again, out of more than twelve hundred yards; yet, three directors have sworn to the same purport. *Orig. Ed.*

I thought you said there was one instance, in which you said you took captain Baillie's part; what was that?—In the instance of the rev. Mr. Cooke.

Did you take his part against Mr. Cooke?—Yes; I said Mr. Cooke had not behaved properly.

Who began in that business of Mr. Cooke; did captain Baillie?—Captain Baillie brought it up; he brought Mr. Cooke from the other end of the room; he said some things that Mr. Cooke knew in his own mind he thought were not true.

So captain Baillie's attack upon Mr. Cooke, was charging him with some things?—The charge was always read, the person charged replied to it, and brought proper evidence to support his reply.

Did captain Baillie make use of any other words to Mr. Cooke, than what he had said in his book?—I don't know that he did.

Do you suppose that the captain's asserting the truth of his charges, was an insult?—I don't believe that captain Baillie's charges were true, nor one tenth part of them.

Did he make use of any other words, than asserting the truth of his charge?—I don't know, possibly he might.

What were they then?—I don't recollect.

Do you recollect preventing captain Allwright from answering a question concerning the quantity of broth taken by people who had no right to it?—There was a charge about some veal; they were also asked, if there was any application from them to the board, that is the council; the civil officers were called in, all their names are down, to the number of 14; after a particular enquiry into the complaints of the Hospital, they were also asked, whether their application to the board of directors had not been duly attended to, and every grievance redressed; they all said they knew of none, except captain Allwright, who said he thought due regard had not been paid to a complaint made to council respecting some bad veal which had been issued to the infirmary; but it appeared by the minutes of the directors, that proper notice had been taken of it by them, notwithstanding the proceeding therein was irregular; as doctor Hossack, the physician, declared to the committee he was not acquainted with it, notwithstanding it was inserted in the minute book, that he complained of it, nor did he know any thing of the matter.

My question is, whether you prevented captain Allwright from answering a question concerning the quantity of broth that was taken from the men, by officers who claimed it as a privilege or perquisite?—I don't remember ever hearing of such a thing; if I did, it will be in the minutes, which are very correct.

Do you remember whether you ordered captain Baillie to withdraw from the committee-room?—I mentioned that before; upon this extraordinary riot, I might call it, between the lawyer and the people, I ordered

the room to be cleared; I said we had done with law, you are to withdraw, and have no occasion to return again; capt. Baillie said, must I go too; just as you please, Sir; you may return again, if you please.

Did you tell capt. Baillie he might return if he pleased?—Yes; he might return if he pleased; after we examined the witnesses, we went into consideration of the charges for and against, that we might draw them out clear; then we ordered the room to be cleared because we thought it not a proper place to do business in, when we come upon that, with 20 people in it.

Did capt. Baillie make any remonstrance at that time against being ordered to withdraw?—Not a single word about it, that I know of; certainly not.

Did not capt. Baillie say he had more things to urge before the committee, he wished to enter into proof of?—When capt. Baillie offered any thing before the committee, it was entered into; there were some shirts that were not washed clean; I proceeded; we did not go there as washermen, but to enquire into the truth and regulation of the charity; we did not look at them; we thought it not our duty to look at them; we paid 11, 12, 1400*l.* a year, for washing of linen; they have the proper officers there, to take care of it; we suppose they do; it is their duty and interest; they can get nothing by not doing it.

And therefore, when the complaint was made, you did not chuse to enquire into it?—We could not judge of washing a whole year, by a few shirts brought in upon a particular occasion.

What other way could you judge of it?—Not by half a dozen shirts brought in.

Could not you judge of it by hearing the evidence of the people?—We had the people that washed them; the reason we did not go into those particular things here, I have the honour to be one of the directors, every complaint of washing, meat, brewing, every thing, when complaint has been made to the directors, the witnesses have been called; they have been examined, and the directors have taken it into consideration, and given proper orders to the proper officers to see it properly done; therefore, I did not think there, as a member of the committee, that we were to repeat that there again; every charge that is made, every complaint, let it be of what nature it will, the persons are summoned to meet at the next court of directors; they are to bring the proof with them, and the people charged to attend: that capt. Baillie knows; he has been there hundreds of times.

Then you are to examine the persons that washed the linen, and not those that wore them?—We brought the proper people to attest they were well or ill done.

Did you send for the pensioners that wore them?—No; it was not our business to send for the pensioners,

Not upon enquiries that concerned them?—There are civil officers appointed for the purpose.

Was it not your business to enquire into the complaints of the pensioners?—If they complained, we did.

Did not capt. Baillie complain?—I don't call him a pensioner.

Did he not complain in his book?—Excuse me about capt. Baillie's book; people that know Greenwich Hospital, and read that book, will not be surprised at any thing; I believe the linen had been looked into.

But did the committee look into it?—I believe they might; I did not, as chairman of the committee; we did every thing that was our duty; every thing that was required of us.

But you don't know that it was done?—I don't.

When you came to sign the report, did you mean to sign to the report of the days you were present only, and the days you were not present also?—I signed to the whole report.

Without being present yourself?—I presume the committee did, when I was absent, as when I was present, they were very accurate in their enquiries; they were very minute in every article; they cleared the room four or five times, and read over the minutes.

How do you know that, when you were not present?—I know it was so when I was there; I know it could not be otherwise by men of business.

Though you were not there yourself, you are now telling us upon your oath, it could not be otherwise; that the gentlemen of the committee, when you were not present, could not possibly do otherwise than be regular?—I do upon my oath declare, that I believe what I signed there to be exactly true.

But do you know it?—I could not when I was not there.

But you signed it?—Yes, I believe I did, and I believe we all signed it.*

Do you recollect having been shewn patterns of cloth, to prove that the Hospital had been served with articles of a bad quality?—If your lordships will permit me, I will go into the particulars of what we purchase of the different people for the use of the Hospital; when any thing is wanting, we advertise in the public papers, that at such and such a day, we will contract for such and such things.

Confine yourself to what was done at the committee; and whether you recollect there being shewn to you, at the committee, any patterns of cloth?—I don't recollect it.

You don't recollect being a little warm upon the occasion?—I might be warm, but I don't recollect any thing particular about it; but I recollect I had reason enough to be warm, with the behaviour of the people about me.

When you went down the last day, the seventh

day, how long did you imagine the committee would sit?—They told me the committee, before, that they certainly should get through the next day; they thought they should have done it the day before; I saw by the minutes who had been examined; I saw by the examinations who were gone through, and there were only two or three things to do the last day of the committee; and as I mentioned before, after we had gone through all the enquiries, I thought it necessary to call all the civil officers in, to ask them a general question; if they had any complaints; if there was any ill behaviour; if there was any thing that had not been redressed; they all declared, which your lordships will see in the report (their own words very strongly expressed) no; after that we asked every gentleman separately, by himself, had they any complaints; they all said no; the committee thought that it was necessary to adjourn to Salters' Hall, the usual place of our meeting in London, to summon all the directors to read the minutes of the committee, in order to form a report to the lords of the Admiralty.

Had you no particular reason for putting an end to the committee that day?—No, only because we had gone through every thing.

Was there no reason because of the proceedings against capt. Baillie in Westminster-hall?—I did not know any thing about it; I did not know that there was a trial in Westminster-hall, till it was over.

You said you asked every body, whether they had any thing further to say?—Certainly.

Did you ask capt. Baillie that?—He sat next to me on my right hand.

Did you ask him that?—Not in particular; I asked if any gentleman had.

And did not capt. Baillie say he had something to say?—Certainly, nothing more than about the blind men; and his going out making such a declaration as he did, I supposed he meant to put an end to the committee.

Did not capt. Baillie say he had more witnesses to call, and begged to have them heard?—No; not that I recollect; I would have sat four or five hours, to have paid capt. Baillie any compliments.

[Mr. Barker withdrew.]

Mr. Cowley called in.

You attended this committee at the desire of capt. Baillie?—I did.

Had you any interest one way or other?—None, but the prejudices of friendship; I had a great pleasure in attending a gentleman whom I conceive to be engaged in the cause of humanity.

When the committee closed, did captain Baillie acquiesce to its being closed in the manner it was?—The whole was a scene of confusion; Mr. Barker's conduct was every thing, I conceive, to be arbitrary and tyrannical through the whole course of the pro-

* In page 316 it appears by the report that it was signed by Mr. Barker and Mr. Cust only.—Orig. Ed.

ceedings; captain Baillie declared the business was not gone through, nor one half through; for we had relied, during the last two or three days, much upon Mr. Cust's promises, which we did not doubt he intended to perform. When Mr. Barker had gone through a mode of business, which I was not able to understand then, nor even now, what the distinctions were, they seemed calculated to puzzle, which they did me exceedingly, Mr. Barker desired we would withdraw; we pleaded the benefit of Mr. Cust's promises; some complaints were made of my behaviour; I wished to pay proper respect to the committee, though not to their proceedings. Captain Baillie said, unless they would allow somebody to attend him, he could not attend at all; it appeared to me the committee caught at that declaration with great eagerness; then I desire you will withdraw too; he did immediately, and never received any other message to be called in; several other gentlemen were called in, in his absence, and we understood the proceedings were resumed; the order for him to withdraw was peremptory; we were told by Mr. Wells, as he was driving off, that the committee would meet again to enquire into the matters concerning the directors; but they would want nobody but themselves.

When captain Baillie was ordered to withdraw, did he object to the closing the committee?—Yes; and that he considered it as a violent arbitrary proceeding, to order him to withdraw; the whole was a very confused proceeding, and rather quarrel than argument, throughout the whole. Captain Baillie found that his evidence was generally refused to be called in; he pressed much the business of the blind men; that their minds were greatly disturbed; that it was a strong charge in his Case; and as he told Mr. Barker, that as he could not be allowed to call evidence, it was ridiculous to say they sat there to enquire into charges, and not hear evidence through; the men were at the door; the reasons given seemed to be excuses why they should not be called in; that the committee determined not to hear them; the expressions that have been stated to this committee were not made use of till after they were repeatedly and peremptorily refused to be heard. Mr. Baillie's mind was a good deal heated, by finding his evidences were not to be heard, and the words he made use of were the complaints of a man in a passion.

Upon what ground did you imagine that Mr. Barker was only half an hour, or an hour, in the committee the third day?—I have recollected a good deal since; I heard what Mr. Barker said upon that subject; he did not make much impression on my mind; when he attended, I believe, the third day, he might be longer there than an hour; it did not press much upon my mind; I mentioned it as a thing that happened half a year ago; Mr. Barker might attend earlier; but the

committee, in point of form, did not open till there were a proper number assembled; Mr. Barker might be present before. The members of the committee afterwards went to dinner; they staid a considerable time, and I recollect that Mr. Cust took notice of it afterwards; he said this method of staying dinner will not do; we must not think of dining any more; so that I am pretty clear, in point of fact, that a great deal of that time was short of actual business; how long Mr. Barker might be in Greenwich Hospital, or in the room, I am not competent to say, but that he was a short time in the room upon business, and therefore I did not impress my mind.

What is your profession?—I was bred in my father's shop in the country, a bookseller and stationer.

What business do you follow?—I am no other business than that; I don't follow the business.

What business do you follow?—I don't follow particularly any business.

You are not a country gentleman of a landed estate, are you?—No.

Then you follow some business for your livelihood?—Yes.

What is that?—I have the good fortune to have some benefit from the stage, from my wife's writings.

What profession do you follow?—I was bred in my father's shop.

Are you a writer yourself?—I certainly do write.
[Mr. Cowley withdrew.]

Tuesday, May 4, 1779.

The Rev. Mr. Cooke called in.

Whether you were present at any conversation that passed between the earl of Sandwich, Mr. Murphy, and Mr. Butler, in December last?—I was.

Relate what passed at that conversation?—I was present with Mr. Murphy, Mr. Butler, and my lord Sandwich; Mr. Murphy came there with proposals from Mr. Baillie; and I recollect that Mr. Baillie's proposals were for an equivalent to be made him, that he might quit Greenwich Hospital; the proposals, as I recollect, were, that his suspension should be taken off; that he should stay in the Hospital a given time; that an equivalent should be made: I think these were the proposals that were made; when my lord Sandwich heard those proposals, he gave little attention to them; Mr. Baillie said he would burn his papers, and give up his books and those sort of things in the presence of any body; lord Sandwich said, I care not at all for your books and papers: Mr. Baillie has done as much mischief as he can; he can do no more; I don't wish to ruin Mr. Baillie nor his family; I should wish to have nothing to do with him; as to his family, I should have no objection, out of compassion sake, to do for them; I have nothing in the world to say to

captain Baillie as to his proposals about his books; he has done as much mischief as he can; it was mentioned its coming into parliament; his lordship said he was ready to meet it in parliament, or any where else; that is pretty much what passed; there were subsequent meetings, I believe, that I was not at; I am clearly of opinion, that lord Sandwich never could or would have listened to it, if it had not been out of mere compassion to his family; he did not consider the man himself in any respect, nor did he wish that it might not be brought forward; he rather wished that it might; and as to any office or employment that he should ask for, his lordship said he was very unfit for any; and I am sure he was moved to it by nothing but mere motives of kindness to his family.

Have you done giving an account of what passed?—Yes; that is, as I believe, as much as I recollect of the matter.

Do you know how Mr. Murphy came to that meeting?—No; that I do not know.

Do you recollect nothing else that passed at that conversation?—No; I don't recollect at present; there might be something more pass, but I don't recollect any thing more at present; that is the substance of it, as much as I recollect, nor have I thought much upon it since.

Do you recollect nothing passing relative to a Mr. Devisme?—Yes; that was what I meant with respect to his family, or any part of his family, out of compassion, that he might wish to serve, in case captain Baillie quitted the Hospital, resigned, gave it up, or went away.

Relate to the committee the particular conversation, as near as you can recollect, the words that passed, without making your comment upon them?—I cannot do that; I can give you the substance of it; which I have done; lord Sandwich was very ready to meet the enquiry; he had done every thing he could do; had nothing to give up; he had got it into parliament, and he could not get it out of parliament.

Did lord Sandwich say he had seen captain Kirke?—I think lord Sandwich did say he had seen captain Kirke.

What did he say he had said to captain Kirke?—I do not remember.

What did lord Sandwich say captain Kirke had said to him?—I did not hear lord Sandwich say; it was a message I was much indisposed to listen to, for I did not like it at all.

I am asking you what lord Sandwich said, not what you were inclined to?—I wish to keep nothing from the House that I know.

Do you say that you did not hear lord Sandwich say, that he had spoke to captain Kirke; and that captain Kirke had no thoughts of Greenwich Hospital?—I do not recollect that.

You did recollect that lord Sandwich had spoke to captain Kirke?—He said he had

seen captain Kirke, and had spoke to him; but I do not recollect what lord Sandwich said had passed between them.

It is extraordinary that you should recollect that lord Sandwich had said he spoke to captain Kirke, and yet you should not recollect what he said had passed between them?—I do not recollect that.

Do you recollect, whether lord Sandwich said the directors of Greenwich Hospital had said, they would not act with captain Baillie?—I did not hear lord Sandwich say that; I can answer for one, as a director, that I would not; I did not hear lord Sandwich say that; he might say it; but I did not hear him.

Did you hear lord Sandwich say, he must quarrel with them, or captain Baillie?—I did not hear lord Sandwich say the least like that.

Did you hear lord Sandwich say, that there was in captain Baillie a great deal of right and a great deal of wrong?—No; I have heard lord Sandwich say there was a great deal of wrong in him.

But you never heard him say there was a great deal of right?—No; I never have.

What did lord Sandwich say he would do, out of compassion to captain Baillie and his family?—That he did not wish to ruin captain Baillie; to send him into the world a beggar, and in want; I believe lord Sandwich's compassion and goodness would have gone so far as to do something for his family.

I am not asking what you think lord Sandwich would do for his family; but what did lord Sandwich say he would do for his family?—I believe lord Sandwich would do something for his family.

Did lord Sandwich, by any words, express a disposition to do any thing for captain Baillie?—Not for captain Baillie; but for his family.

What to do for his family?—That he wished to serve Mr. Devisme.

How?—It was his proposition, as coming from captain Baillie himself, through Mr. Murphy; I have always understood it came from him, that he wished Mr. Devisme might be made a commissioner of victualling, in the room of captain Kirke.

What did lord Sandwich say to that subject?—I don't recollect what he said to that subject.

Do you recollect whether lord Sandwich said, that if captain Baillie would resign, that he would make his half pay 600*l.* a year? I never heard him say any such thing. Captain Baillie said, he thought his place worth 600*l.* a year.

Captain Baillie was not there.—I am speaking of the proposal that came from captain Baillie; for I look upon those proposals to come from him, through his counsel and through his agent.

Give an account of what the agent said then.—The agent said captain Baillie looked upon his place to be worth 600*l.* a year; but

I could not imagine that lord Sandwich could mean to give him 600*l.* a year.

I don't want to know what you imagine; I desire to know nothing about your imagination; but what passed. Did lord Sandwich say any thing upon Mr. Murphy's saying, he imagined the place worth 600*l.* a year? What did lord Sandwich say to that?—I do not recollect.

It was said upon you to say, that lord Sandwich did not, in that conversation, say he would make up his place 600*l.* a year, if captain Baillie would resign his employment?—I did not understand lord Sandwich to say any such thing.

Will you take upon yourself to say he did not say so?—I will not take upon myself to say so; I did not understand him to say so.

Will you undertake to say he did not say so?—I do not recollect it; but I will undertake to say I did not understand lord Sandwich to say, that he would give equal to 600*l.* a year.

Did you hear lord Sandwich say, he thought that the valuation of Mr. Murphy a fair valuation of captain Baillie's place?—No; I did not hear him say that.

You did not hear lord Sandwich say, he thought Mr. Murphy, in stating captain Baillie's place worth 600*l.* a year, stated it a fair valuation?—I did not; lord Sandwich knows the value of the place.

I am not asking you what lord Sandwich knows; but what you heard in that conversation. Whether you did not say, at that conversation, that it must be expected that the report of the committee should be printed without any reply?—I did say that; I thought that the report should be printed, in case any thing was settled with respect to that negotiation; that on the part of the directors, on the part of the individuals, and the officers of the house, that it should be printed, as a justification of their characters.

And did you not say, that it must be printed without a reply from captain Baillie?—I said no such thing as without any reply.

Then, of course, as you did not say that, you do not recollect, whether Mr. Murphy, in answer to that, said, that the report was already printed, in two columns; that therefore it might be depended upon that captain Baillie would print a third column?—I remember no such thing.

Do you recollect, whether lord Sandwich said that if captain Baillie did not resign his office, he should look upon it as a flag of defiance?—I never heard lord Sandwich say any such words.

That he would turn him out, and he must take the consequence?—I never heard him say such words. [Rev. Mr. Cooke withdrew.]

Mr. Bertels called in.

What profession are you of?—A painter and a picture-cleaner.

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Have you much business in the way of cleaning pictures?—I do a great deal.

Do you know the paintings of Greenwich Hospital?—I do.

If they had been advertised to have been cleaned, for what sum would you have done it?—For about 400*l.*

If you had been required to give security for doing it in a proper manner, so as not to have hurt, or damaged the pictures, would you have undertaken to give security for so doing?—I would. [Mr. Bertels withdrew.]

John Glass called in.

What is your station in Greenwich Hospital?—I am in none at present; I am turned out of the house for life.

What were you in Greenwich Hospital?—A boatswain of the Painted-hall.

What were you turned out for?—The greatest reason that I think is, I had two summonses from your lordships; the first was from the rev. Mr. Cooke, as I was told, therefore I was certain that I could say nothing with regard to that side, but captain Baillie's; as I had given my affidavit of the expence of cleaning the Painted-hall, concerning the workmen's wages, I had given an account of that, and attended this House. Mr. Picton, the boatswain of the infirmary, brought me a summons from the House of Lords; he said it came from the rev. Mr. Cooke; I was amazed I should have a summons from him; that was on the 24th. On the 25th I had another; that was brought by the messenger belonging to Greenwich Hospital; when I came from dinner, I had the summons given me by one of my partners; he said, it came from Mr. Herbert, the messenger of the house at Greenwich; that summons coming, as I imagined, from captain Baillie, I thought I was to attend to strictly; and, because I attended to that, it was one of the reasons why I was turned out of the Hospital for life; upon the account that I did not attend to the rev. Mr. Cooke's summons.

Are you turned out?—I am.

What was the complaint, that was entered into the complaint book, against you?—After not attending to Mr. Cooke's summons, Mr. Mylne, the clerk of the works, happened to come in, upon the 6th of March; the Painted-hall had been cleaned for the Sunday's service; it is made into a temporary chapel since the fire; a strange dog came in, I did not know it was Mr. Mylne's dog, he came in after Mr. Mylne, I did not suppose it was Mr. Mylne's dog, or I would not have turned him out; it was my order to keep dogs out, because it had been cleaned for the Sunday service. Mr. Mylne was swearing, in a violent manner, at the workmen, that were doing the curtain to stop the sound of the echo; I went in, at the same time, and I took my great coat, and went to hunch the dog out; upon that, Mr. Mylne left off his conversation with the workmen, and said to me, that is

my dog, I will have my dog taken care of as well as myself; he doubled his fist at me, and advanced two steps towards me, and called me a son of a bitch, and, more than that, said I was a damned impertinent scoundrel; I said it was more than any gentleman in the Hospital would say; Mr. Mylne was not satisfied with that, but went out and returned again in a few minutes; I was standing with my back to the northward; he came up, with a frown upon his brow, and anger in his countenance; he said to me, what is your name? I said, John Glass; he said, I know it well, and doubled his fist at me again. A little after that, on the 10th of the month, I happened to be upon my duty at the Painted-hall, Mr. Fortye, the last lieutenant appointed, came in with a young lady to play the organ, and some more gentlefolks with them; the sound of my voice, when I was giving the explanation of the paintings to the company, drowned the organ; if I had known they were upon a party of pleasure for music, I would not have begun upon that duty; Mr. Fortye said, leave off; I left off immediately; I obeyed him as being a lieutenant. There is a rule, when a stranger comes, to shut the upper-hall door; for if that door is open, a stranger will go up to see the paintings there; I pulled to the door and shut it, as I had done before; in so doing, the rev. Mr. Maule, who was in the hall at the same time, said to me, what is that for? I said, it was my orders. That your orders? I said yes; and I have received it from different gentlemen in this House, and therefore I do no more than I have done before. I locked the door, as I often have done; but one fault I did, in taking the key out and putting it in my pocket; I acknowledge that as a fault. The rev. Mr. Maule said to me, open the door; I own I disobeyed him the first time; but the second time I took the key out of my pocket, and opened the door; then I obeyed the rev. Mr. Maule. The next day following, I came up to attend your lordships, according to my summons; captain Maplesden came into the Painted-hall; my poor wife came to take my two quarts of beer, and she heard the noise, Where is John Glass? They told him, I was attending at the House of Lords, according to my summons; he said, I was to do no more business there as boatswain. When I came home, my wife gave me that joy. Poor woman, she kept up her spirits. But if he is broke, says she, it is for no harm. When she told me of it, I said I could not help it; perhaps something else would come by and by. I went to Mr. Lane, the porter that hires us to shew the paintings, and pays our wages; I said, I understood I had been broke, since I had been up at the House of Lords; he said, I am sorry for it, for you are partly my main beam; I entrusted you, and found you honest. I came up again, on Friday, to attend the House of Lords; I was sworn that day at the bar. I went on Saturday to captain Maples-

den, our new lieutenant-governor's house. What do you want? I am John Glass; I came to know whether you have broke me as being boatswain; he said he had; and it is my positive orders that you shall do no duty there. I said, sir Charles Hardy made me, and I have been told it depends on him to break me. The next day, when the people came up here, to see your lordships going to the House, myself and my brother pensioners said it was a great sight; I came up, and thought it was a noble one; some of the nurses clapped their hands together, and said, God Almighty bless your lordships! God bless captain Baillie! Captain Baillie for ever! Truth and justice, and no alteration of the charter! These were the words they said. When I saw his royal highness the duke of Cumberland, I pulled off my hat, and gave three cheers, as I knew the livery; that was another great offence. On the Saturday following, I was sent for to captain Maplesden's apartments, where I found captain Chads, captain Lynn, and lieutenant Besson. I was accused then; there was a person to write against us as rioters, and we were accused of that which I will do again; when I see any of the princes of the blood, I will give them three cheers, or any lord. Lieutenant Besson said, he did not see that I was to blame, for that I was no duty boatswain, nor mate; I said, I was summoned to be there, that there was no mob, but only a collection of poor old geese, as we are stiled at Greenwich, come to see your lordships come to the House, and we were very well pleased. Captain Maplesden said, why did I not disperse the mob? Was it supposed that I could disperse the mob, when six boatswains could not do it; they went into their ranks again, and stood just as if they were to face the French. I was reckoned a bad man, and a riotous person; that was another great part of my offence. At present, I have neither victuals, nor drink, nor money; I have the air to look at, and a wife to support.

How long have you been at sea?—Nineteen years; and I should have been at sea nineteen years more if I had not lost the use of my right hand (holding up his hand). I have been up the Streights with the duke of York; I have been five years in the Hospital, and was never complained of before.

Did you keep an account of the cleaning and repairing of the paintings?—I did.

What did it amount to?—About 170*l.* with regard to the workmen's wages.

How do you know what their wages were?—The people employed, told me, and Mr. Davis's sons have told me themselves.

Did you keep an account of that time?—I did.

And from the accounts of their time, and the wages that Mr. Davis's people told you they worked at, how much do you say it amounted to?—One hundred and seventy odd

pounds, letting alone materials, only bare wages to different workmen.

Were you desired to keep such an account?—No, not at all; I kept it for my own satisfaction, as I heard 1,000*l.* was to be paid for it; the workmen, and several gentlemen that came in, said it was a very fine job.

What did they mean, by saying it was a fine job?—For Mr. Davis to clear so much money as they supposed he did; they looked upon it, it might be done for about 400*l.* a gentleman said he was a judge of painting.

What was it supposed Mr. Davis was to receive?—A thousand pounds.

And, by your account of the workmen, how much did you say it cost?—One hundred and seventy odd pounds.

Did any body find fault with you, for taking this account?—Nobody at all.

And are you now quite turned out of Greenwich Hospital?—Yes; I am entirely.

Was it by the council?—Yes, I was present; I was dismissed ten days before I was tried with regard to the dog, and opening the door with an air of impertinence, as it was called, and leaving off the explanation when I was desired.

And the other time was for attending this House?—Yes; I went to the council to answer charges alleged against me; I stood an hour and half; lieutenant Fortye gave his evidence against me, that I had behaved in an insolent manner; and he owned, at the same time, that I left off when he desired me; therefore, I think, I obeyed him. The rev. Mr. Maule was the next evidence against me; he said, I would not open the door the first time he desired me; which I own was a fault. I was ordered then to speak in my own defence; but I am before my story; captain Maplesden said, What did he say? What was his impertinence? What was his bad behaviour? lieutenant Fortye said, I said nothing, but muttered. I leave that to your lordships whether that is saying any thing. I was ordered, by the council, to beg pardon, which I would have done willingly; I was to be broke from my place, as being boatswain of the Painted Hall; but that was not thought sufficient; that would not do; but I must stand three meat days in the pillory, before the body of the pensioners.

Is it usual in Greenwich Hospital, to put people in the pillory for the first offence?—The first offence is always forgiven by the council.

Was this your first offence?—Yes, it was, and yet I was ordered to be in the pillory three meat days, besides begging pardon, and being broke from being a boatswain.

Did you refuse that?—The pillory I did; the rest I agreed to; I would not stand in the pillory, as I was ordered to give evidence the next day at your lordships' bar; because I thought the pillory a thing for a rogue; that was my great objection against it.

Who were at the council?—Captain Ma-

plesden, captain Lynn, captain Chads, lieutenant Fortye, lieutenant Kerr, the reverend Mr. Cooke, the reverend Mr. Maule, and I believe Mr. Godby came in now and then, to give his approbation. I would not do that; then said captain Maplesden, you must take the consequence; then said I, so I will; he said the consequence is, you^e will be turned out of the House; I said, I am sorry for it. I was ordered to come to the council next week; lieutenant Moyle came out, and said, I am lieutenant of the week; he said, will you agree to what the council have ordered? Will you beg pardon in that manner? I said I would do every thing but stand in the pillory; lieutenant Moyle sent for the regulating boatswain, who came presently after, with a couple of centinels with halberts, and the mate of the guard; I said to one White, What is this for? Have I been guilty of any theft or misdemeanor, that I am to be ranked out between hundreds of men? Two or three men that had been so guilty, had not been ranked out in that manner, but went out voluntary. Captain Maplesden came out and said, it is our pleasure you should be ranked out in that manner, for not doing as we desired you; captain Lynn came out, and said very kindly to me, 'Were it in my power I would hang you.'

You need not go on with that part of the story; you were entirely turned out of the Hospital?—Yes; ever since the 20th of last month.

Is it usual for boatswains ever standing in the pillory?—I never knew an instance of a boatswain's standing in the pillory since I have been in the house.

How came you to go to take the advice of counsel, that the governor, admiral Hardy, was the only person that could turn you out of your place?—If those gentlemen that sat at the council took that power out of sir Charles's hand, I cannot answer for that.

How came you to ask counsel's advice?—By order of the lieutenant of the week.

When was that?—The 22nd of last month.

And you mentioned, upon a former occasion, that you applied to counsel, to know whether any body but admiral Hardy could turn you out?—Before I was on the Painted Hall duty, I was a white frock man; and some of the pensioners would sometimes come, when the beer was bad, and would find fault with us; we used to tell them we could not redress it, but they must go to the officers belonging to the House; I was at the council with regard to that, and gave my evidence at the council with regard to the beer; the beer was very bad.

You meant the council of the Hospital; did you?—Yes. [John Glass withdrew.]

Charles Butler, esq. called in.

Whether you were present at any conversation between lord Sandwich and Mr. Murphy, upon the subject of captain Baillie?—I

beg leave to submit to your lordships, that it is impossible for me to answer that question. I know nothing at all on this subject, but what I know as counsel for lord Sandwich; and therefore, I conceive it would be improper for me to answer that question; at the same time, I beg leave to observe, that it does not proceed from the least want of respect to this House, but from what I have been told is a professional duty.

Earl of Sandwich. I am exceedingly desirous that Mr. Butler should answer; and if it is out of any delicacy to me, that he refuses to answer, I totally absolve him from any such obligation; and it is my desire he will suffer himself to be examined; I absolve him from any engagement of secrecy he may have to me.—*A.* I am very sorry to be so exceedingly troublesome to your lordships; but, as in the course of this business of which I am now called upon to give an account, the greatest part of what I know, I also know from a communication with the counsel of captain Baillie; I conceive I am not at liberty to speak, unless I have also the consent of captain Baillie.

I beg to know whether you are of the profession of the law?—I am.

Have you taken the oaths?—That, I should apprehend, is a question which this House will have the humanity not to ask of me, because it leads to an explanation rather inconvenient to myself.

Captain Baillie called in.

Have you any objections to Mr. Butler declaring any thing he knows concerning the transaction between lord Sandwich and you?—I have no secrets in this business.

Are you desirous that both Mr. Butler and Mr. Murphy should be examined?—I wish exceedingly they may be both examined.

Mr. Butler sworn at the bar.

Mr. Butler. I hope your lordships will excuse me in mentioning, that as I have now the express consent to be examined of lord Sandwich and captain Baillie, whether I am to be called counsel or attorney, I wish to wave, because it is waved by the parties.

Were you present at any conversation between lord Sandwich and Mr. Murphy on the subject of captain Baillie?—I was present at a conversation between lord Sandwich and Mr. Murphy on the occasion; but I believe it will be difficult to explain that conversation, unless I also explain the steps preceding it; and if your lordships will give me leave, I shall be glad to mention all I know upon the subject. About the beginning of the month of last December, being at Serle's coffee-house, in Lincoln's-inn, (a coffee-house much frequented by lawyers) Mr. Murphy came in; we discoursed together on various subjects; and, at length, upon the subject of Greenwich Hospital; but which first mentioned that subject, I am at present at a loss to recollect; I believe your lordship can recollect a topic of conversation that was,

about that time, very frequent even among your lordships, the very great display of abilities that a young gentleman of the profession of the law had made on the argument* concerning Greenwich Hospital, in the court of King's-bench; as far as my recollection now serves me, it began by a conversation relative to that gentleman; I had not been present at the argument, and therefore it is probable I might ask Mr. Murphy, whether that gentleman was entitled to the great reputation he had acquired; it is exceedingly probable the conversation might begin upon that subject, though I do not recollect it exactly, and that it might go on to the case of Greenwich Hospital; in the course of that business, Mr. Murphy said he was exceedingly surprised that lord Sandwich did not accept captain Baillie's offer of retiring for an equivalent provision; that to ruin captain Baillie would be beneath lord Sandwich; to make a provision for him would be generous; and he wondered his lordship did not do it. I asked him if captain Baillie was in earnest in that proposal. Mr. Murphy's answer was, that to be consistent with himself, he must be so. I told him that I frequently had the honour of seeing lord Sandwich, and, if it was his desire, that I should mention what had passed between us to his lordship, I would do so; he accordingly not only consented, but desired that I should do it; I wrote to his lordship, that I had some particular business to communicate to him, and begged he would appoint a time when I should wait upon him; his lordship appointed me to breakfast with him the next day; and I accordingly waited upon him; I cannot immediately recollect the day of the month; and though I have taken some pains to find it, I have not been able; but I should imagine it was about the 10th, 11th, or 12th (but I may be wrong as to two or three days) of the month of December. In consequence of this desire, I waited upon his lordship; he heard me relate the conversation which had passed between Mr. Murphy and myself the preceding day; it is impossible to be more averse than his lordship was to proceed at all upon the business; but upon my representing to him, that Mr. Murphy was a man of a very respectable character, his lordship consented to give him, through me, an answer to what had passed the day before between us; his lordship said, however disrespectful, ungrateful, or ungenerous, captain Baillie's conduct might have been, he really did not wish to ruin him, or to add to his distresses; but captain Baillie had made himself so exceedingly odious to every person in the Hospital, and his stay there would be such an infinite source of discontent and division, and was so directly contrary and incompatible with the peace and welfare of the Hospital, that it was impossi-

* See Mr. Erskine's most powerful speech, sup. p. 31.

ble to continue him in the Hospital any longer; if, therefore, he would consult the peace and welfare of the Hospital so much, as to retire immediately, and resign all his offices and employments there, that he had no objection to make him some provision; he said he would not see captain Baillie on any account or pretence whatever; but that he had no objection to see Mr. Murphy. I communicated these proposals to Mr. Murphy the same day; and, at the same meeting, the following proposals were dictated to me, by Mr. Murphy.

How did you communicate to Mr. Murphy what lord Sandwich said?—By word of mouth; when I came into Mr. Murphy's chambers, captain Baillie and his brother (as Mr. Murphy has since told me) happened, by accident, to be at Mr. Murphy's chambers; when I came into Mr. Murphy's chambers, those two gentlemen retired into another apartment; I told Mr. Murphy what had passed between lord Sandwich and myself; and this proposal was immediately dictated to me by Mr. Murphy: "Captain Baillie, upon having his suspension taken off, and receiving the intermediate profits, and being permitted to stay in the Hospital for a given time, will then resign his office, an equivalent provision being to be made for him; he considers his place in the Hospital at 600*l.* per annum; being desired to point out a mode, he thinks it may be done in the following manner: he understands captain Kirke, a commissioner of the victualling-office, would prefer to be the lieutenant governor of Greenwich Hospital; he therefore may be appointed in captain Baillie's room; and captain Baillie will be content to retire on his half-pay, if his son-in-law, Mr. Devisme, is appointed a commissioner, in the room of Mr. Kirke; or a commissioner's place, at Minorca, for himself;—in this case, he will do whatever is in his power to prevent any farther disturbance on the subject; and the remaining copies of the printed Case shall be destroyed in the presence of any person that will attend for that purpose. He hopes there will be no more printing on either side." This proposal was dictated to me by Mr. Murphy, and which I communicated to his lordship.

Is that paper in your hand-writing, or in Mr. Murphy's?—In my hand-writing; it is what Mr. Murphy immediately dictated; I am at present at a loss to say whether it was taken from a paper I copied immediately under his eye, or whether he dictated it; I believe it was partly the one, and partly the other; but as soon as I copied it, I read it: there is also in this paper some words, which I should mention to your lordships, which are as follows: "Memorandum, to explain to ——" (which was lord Sandwich) "the purport of the first and last article." That is a memorandum which I made at the time, only for my own observation, as this was not the thing meant to be immediately delivered

in to his lordship. I immediately sent that proposal to my lord Sandwich. I received, the same day, a letter from him, desiring that Mr. Murphy and myself would attend, at his lordship's house, the Sunday following; I believe it was the next day but one following; but, however, I recollect it was the Sunday following; accordingly, Mr. Murphy and myself waited upon his lordship.

Did you send a copy of that letter to my lord Sandwich?—This is the direct paper which I sent to his lordship; in consequence of this, Mr. Murphy and I waited upon his lordship, Mr. Cooke was also present; his lordship told Mr. Murphy, that captain Baillie was a man with whom he could have no connection, or transact any business, but that he had formerly been concerned in business, in which Mr. Murphy had been employed; he also said he knew him very well from his character, and therefore considered him as a man, on whose honour and integrity he could rely; he also said, that whatever motives of complaint he might have against captain Baillie, these motives really had at that time no kind of weight with him; that his presence in the Hospital was grown to be such a great obstacle to the peace, welfare, and good government of the Hospital, that it was impossible he should continue there any longer; that he had received formal complaints against captain Baillie, from every order of men in the Hospital, and therefore it was not in his power to continue him, if he meant to act for the welfare and good of the Hospital, but he did not wish to ruin him; if captain Baillie would so far consider the peace and welfare of the Hospital, as to retire immediately, and resign all his offices and employments, he had no objection to make the provision that was mentioned for Mr. Devisme, or for any of captain Baillie's family; his lordship then read the proposals, which I have had the honour of reading to your lordships. He said, that with respect to what captain Baillie had mentioned of captain Kirke, he believed he was much misinformed, as captain Kirke did not wish the change which was there mentioned, and with respect to a "commissioner's place at Minorca, which captain Baillie mentioned for himself, he could not give him that place, or give him any place where he would have to act in concert with any other person, as he knew, from long experience, that captain Baillie's temper was so singularly unhappy and intemperate, as to make it impossible for any mortal to live with him *;" but with re-

* This illiberal attack upon an officer, whose character is his life and fortune, originating only in the mind of lord Sandwich, is not confirmed by a single instance of misconduct on the part of captain Baillie, in the course of 40 years service, and amounts to only hearsay evidence at the best, of what Mr. Murphy and Mr. Butler said they had heard lord Sandwich say; yet his lordship was pleased to declare afterwards in his speech, that he had not at-

spect to the provision for Mr. Devisme, whom he had heard was a more temperate man, he had no objection to make some provision for Mr. Devisme. Mr. Murphy took occasion to say what he thought, would excuse or recommend captain Baillie's conduct, upon his mentioning captain Baillie's offer to give the copies of his printed Case, and also the use of the affidavits; lord Sandwich said, that with respect to his printed Case and affidavits, and his conduct in every other respect, he was quite at liberty to act as he pleased, that matters had gone so far, that captain Baillie at present had nothing in his power; that with respect to an enquiry into his administration of Greenwich Hospital, either in parliament or elsewhere, he rather wished to bring it on, than sought to avoid it; and as matters then stood, if captain Baillie was ever so desirous of wishing to prevent this enquiry, that it was impossible in him to be of the least service in doing it; he therefore said, he had nothing in his power to offer; however, as he did not wish to ruin him, and as getting him immediately from the Hospital would be contributing very essentially to the good and welfare of the Hospital, if captain Baillie would so far co-operate, as to contribute to that essential advantage, he would make him the provision which he before spoke of for Mr. Devisme, or any of captain Baillie's family; upon this we parted.

I believe it was the day after, or the day next but one, but I cannot immediately say; this proposal is dated the 12th of December, which I mentioned to your lordship; and the conversation, which I am now about to communicate, was, I believe, on the 16th, and that conversation was held at Mr. Murphy's chambers, at which captain Baillie, Mr. Murphy, captain Baillie's brother, and myself, were present. Mr. Murphy repeated to captain Baillie what had passed between his lordship and myself at that meeting; he also mentioned to him what had passed between us at the meeting at the coffee-house. However, from the manner in which he mentioned it, I thought that his mentioning what had passed between us at the coffee-house, was rather to have my approbation; that he repeated it in a more faithful manner, than that it was the first time he had communicated it to captain Baillie: it seemed to me that he had repeated it before to captain Baillie, but

was then repeating it before me, that I might contradict any thing, if it was represented improperly; there was nothing represented improperly by him, therefore I contradicted nothing; there was a great deal of conversation passed between the two Mr. Baillies, Mr. Murphy, and myself, respecting the business before us; but, however, it ended in the following proposal: (I have endeavoured to recollect every thing material; but I do not recollect there was any thing else material;) the whole conversation ended in this second proposal, which was also dictated by Mr. Murphy; whether dictated to me, or copied from a writing he gave me, I do not pretend to say; but after I had written it, I read it over to Mr. Murphy, and he approved of it.

"Captain Baillie, upon having an equivalent made him, is willing to resign his office of lieutenant-governor of Greenwich Hospital, which provision may be either to him or Mr. Devisme, as before-mentioned; but the resignation is not to be made till the compensation is given. Captain Baillie wishes to have a ship, though it be but for one cruize, in order to go out of the Hospital with credit, and to receive the emoluments of his office, till the compensation is given, nothing done in this business to keep the service from being open to capt. Baillie on any occasion."

There is also upon this a letter, which I sent with the above proposal to my lord Sandwich; I don't know whether your lordship will choose it should be read, but if you do, I will read it.

The Earl of Sandwich. Read it, read it.

Mr. Butler read the Letter as followeth:

"My lord, the above is the proposal delivered in by captain Baillie to Mr. Murphy and myself, and desired by him to be delivered to your lordship; he was particularly solicitous that it should not be shewn to Mr. Cooke, or Mr. Ibbetson; and that when I had the honour of waiting again on your lordship to receive your lordship's sentiments upon it, that Mr. Cooke should not be present. The answer to his book is ready for the press; I am to read it over to Mr. Ibbetson to day, and to Mr. Cooke to-morrow.—I have the honour to be, with great respect, your lordship's obliged and humble servant, CHARLES BUTLER."

"December 16, 1778."

In consequence of this letter being sent to lord Sandwich, I waited again upon his lordship; his discourse was in every respect the same as it had been the day before; he said, that with respect to his book, and his affidavits, and his conduct in every other respect, he was at liberty to act as he pleased; that the present situation of Greenwich Hospital was such, that it was impossible to keep capt. Baillie any longer in the Hospital, consistent with his duty to the Hospital; that if captain Baillie would resign all his employments, and retire immediately, it would be doing an essential service to the Hospital; and he would

tacked captain Baillie's character as an officer, for he knew nothing of him as such, good or bad; it would therefore have been honourable in his lordship, to have said so on the spot, when these assertions were made: Can there be any greater imputation upon the character of a man, especially an officer, than the words (marked with inverted commas), echoed by Mr. Butler from the lips of lord Sandwich? Upon the whole, it is hoped, the greater part of this harangue will be considered as extraneous matter, quite foreign from the purpose, artfully introduced to injure the character of an officer, because no other mode could be devised. *Orig. Ed.*

so far consider it as to make the provision, which he before spoke of, for Mr. Devisme, or his family; that if he did not resign his office and his employments, he should consider it as a defiance of his right to remove him, and should proceed accordingly; that at all events he should quit the Hospital, where his presence was absolutely incompatible with the good government of the Hospital, and the peace and happiness of those that were in it; the day after, I believe, it was; (if I should be mistaken in a day I am sure I shall be excused) I communicated what had passed between us to Mr. Murphy, at Mr. Murphy's chamber, at which captain Baillie and Mr. Murphy were present; I also believe (it is difficult to remember at this distance of time, as I did not immediately attempt to recollect myself;) that Mr. Baillie's brother was also there at the second meeting; but whether he was, or not, I am at a loss to say; I believe it is immaterial; but I wish to express myself with as much accuracy as I can; I communicated what had passed between them to Mr. Murphy and captain Baillie; a great deal of discourse passed upon that subject; Mr. Murphy recommended captain Baillie to retire on the faith of his lordship's promises, in which I also joined him, as I pitied much the case of captain Baillie; however, it did not seem proper to him to do so; in consequence of which the meeting broke up. Captain Baillie himself, and his brother (whether it was this, or another time, but he once, I am sure, was in company) they both expressed themselves perfectly satisfied with my conduct, and in the part I had taken in the business, and we parted seemingly on very good terms; there are some other circumstances I beg leave to mention to your lordships; the first time I had the honour of meeting captain Baillie at Mr. Murphy's, the two Mr. Baillie's were present. Mr. Murphy told them, that what he was about to communicate to them was under the seal of secrecy, and a perfect confidence of honour, that whatever the event of the business might be, or whatever turn it might take, neither party should take, or attempt to take, the least advantage of it. I understood from Mr. Murphy, at the time, that the first time he had spoken to captain Baillie on the subject (for he had spoken to him previous to our meeting together) that secrecy was enjoined.

What had passed between Mr. Murphy and captain Baillie, is only hearsay?—The first time I saw Mr. Murphy at Serle's coffee-house, we had general discourse between us; that what then passed was to go no farther; and that no kind of advantage or use should be made of it; when I met captain Baillie and his brother at Mr. Murphy's chambers, the same discourse passed between us; and Mr. Murphy told them, that whatever turn the business might take, neither party was to take the least advantage of it, to which captain Baillie and his brother solemnly assent-

ed; the last thing that was done at our last meeting, was to renew this declaration, and it received the same agreement on all sides; and I am sure, on mine, it has been very religiously observed. At one of our meetings; but whether it was the first or second, I cannot immediately recollect; I mentioned, I believe, to captain Baillie, at least it was mentioned, and I believe it was I who mentioned it, as I do not believe any body else in company then knew it, that there was in the press a publication of the report of the committee, to which publication captain Baillie seemed exceedingly averse; I told him that I thought it was but proper, as he had attacked the characters of many individuals by one publication, they should be at liberty to defend their characters by another; captain Baillie seemed exceedingly to object to this publication. However, that the business did not go on, was not owing in any wise to any difference of opinion in this respect; had it rested with me, I am very certain that it would not have been any material difficulty in the treaty; for I should have advised the parties, whether they would have accepted my advice or not, I am at present at a loss to say, but I should have recommended to them not to have published the report, provided other matters had been settled: but as it was a kind of running treaty, I cannot express myself upon that point; I am certain, as far as I am able to judge, it appeared to me to go off upon this ground, that captain Baillie was persuaded erroneously, as I told him at that time, that he could hold his place in law, and therefore would not retire till he was put in the actual possession of an equivalent; I have now done with the whole I have to say on this business, except two points I see I have neglected to mention, which are, that I am perfectly satisfied that the meeting at Serle's coffee-house was, on Mr. Murphy's side, perfectly accidental; and I can assure your lordships it was perfectly accidental on mine; Mr. Murphy arrived that very morning out of the country on a sudden business; he stopt at the coffee-house before he went to his chambers; we had frequently talked together at the coffee-house before, and it happened we talked then; however, on my side, it was perfectly accidental, and I had not the least direction, wish, or desire of my own, to talk with captain Baillie, Mr. Murphy, or any of captain Baillie's friends upon the subject; I am sufficiently conversant with business, to know that any sort of undertaking in that way, is attended with more danger to the party concerned, than it can with any advantage.

I understood you, that lord Sandwich said he had talked with Mr. Kirke, and Mr. Kirke had no thoughts of Greenwich Hospital?—Lord Sandwich did not say he had talked with capt. Kirke; lord Sandwich said he believed capt. Baillie was mis-informed upon the subject; I understood that my lord Sandwich either knew or believed that captain Kirke

would not consent to any such exchange, but I never heard that he had talked with captain Kirke on the business.

Do you recollect whether lord Sandwich said, in that conversation, that the directors of Greenwich Hospital had declared they would not act with captain Baillie?—It is difficult, at this time, to say that he made use of those express words; the words, as far as they strike me, were, that he had received formal complaints from every order of men in the Hospital; but those particular words, or words of the same effect, I believe lord Sandwich did not make use of.

Do you recollect that lord Sandwich said, that such being their resolution, whether right or wrong, he must quarrel with them, or with captain Baillie; he would not quarrel with the directors?—I do not recollect that lord Sandwich made use of the first part of the declaration; but, as far as my recollection serves me, lord Sandwich said, that matters were now in such a situation that it was incumbent on him, either to quarrel with the directors, or with captain Baillie; and that he should make no doubt of preferring the directors to captain Baillie; or words to that effect.

Do you recollect whether lord Sandwich said, that there was a great deal of right, and a great deal of wrong, in captain Baillie?—Lord Sandwich said, that he believed captain Baillie, in the first outset of this business, might have some good intentions; as far as I can recollect, his lordship's expression was, that these good intentions, such as they were, were always counteracted by a very uncommon twist of understanding.

Do you recollect whether lord Sandwich said, that if captain Baillie would write a letter to the Admiralty, signifying that there was a combination against him, in the Hospital, and therefore desiring him to resign, without giving him the trouble to dismiss him, he would make up his half-pay 600*l.* a year?—I have endeavoured to inform your lordships of the whole that passed upon that subject; there are some questions to which it is difficult to give a decisive no or yes to; because lord Sandwich said so in one part, but not in the other part. His lordship said, if captain Baillie would consult the peace of the Hospital, by resigning his employments, and retiring, either signifying his reasons or not; and he might at the same time mention the reason suggested; I believe he did; but, however, he would have no objection to his assigning his reasons; but, if he would retire, he should have no objection to making to him the provision before spoken of.

That provision, I understand, is the one for Mr. Devisme?—Yes.

Did lord Sandwich say he would, if captain Baillie would resign, make up his half-pay 600*l.* a year?—No, he did not; and I am very certain upon that subject: because, I remember, when I read to his lordship that

part of captain Baillie's first proposal, in which he says, he considered his place in the Hospital worth 600*l.* a year, lord Sandwich said, it was no such thing.

Whether you recollect that lord Sandwich said to Mr. Murphy, that in stating it in his argument, in the court of King's-bench, at 600*l.* a year, he had stated it fairly?—I am very certain that lord Sandwich told me these words I have mentioned; and I am also, I think, positive (but one's oath only extends to one's knowledge and belief; but as far as that goes, which is as far as my oath goes) I am positive, he never said any such thing to Mr. Murphy.

Do you recollect Mr. Cooke's having said, that it would be expected that the report of the committee should be printed, without any reply on the part of captain Baillie?—I, at this time, do not recollect that Mr. Cooke did say, or did not say, those words; I am sure that, in that conversation, Mr. Cooke was a perfect cypher; but whether he said those words or not, I cannot immediately say.

Perhaps some words may bring this to your recollection; whether Mr. Murphy did not say, that the report was already printed in two columns, and that captain Baillie, he might depend upon it, would print a third?—I am sure captain Baillie could not say so; because, to my certain knowledge, it was not then printed in two columns.

Do you mean printed, or published?—I mean printed.

It was not at that time printed?—No.

Nor prepared in two columns?—There, I cannot immediately pretend to say, it might be prepared in writing; though, to the best of my remembrance, I believe it was not; I do not believe it was printed in two columns, till the 16th of January.

Had you not mentioned it to Mr. Murphy, as being printed in two columns?—I mentioned it to Mr. Murphy, and to captain Baillie, that there was an idea of printing the report of the committee; that it was actually in the press; but the printing of that report of the committee, in the manner in which it was printed, was not finished, I believe, till the 16th of January; and that happened on the 16th of December.

Then, I understand you, that you did mention it to be in the press?—It was.

Then could it be otherwise than prepared in the manner in which it was printed?—Certainly; there might be sufficient for the first, second, or third sheet of it, without the fourth or fifth sheet being ready; I don't wish to be guilty of equivocation. The first time my lord Sandwich spoke to me on the subject, I told him it was my opinion, that the report of the committee should be printed, and such other of the official papers of the Hospital as might tend to elucidate that report; and his lordship was so obliging as to follow my advice upon the subject; and in that manner it was printed, at the time mentioned. I don't

believe that above half of it had been prepared ready for the press; because the report of the committee does not go to every particular point, which is mentioned in captain Baillie's book; and there was a great difficulty in selecting such points as immediately were answered by the report of the committee, in the order in which the committee reported them; there was a great deal of difficulty to do it in such a manner, as captain Baillie might not have reason to think it was done partially, and that took up a great deal of time and labour; and therefore, at the time mentioned, I do not believe half the book was printed, or prepared; I may be wrong; I did not expect to be asked the question; but I believe the whole was not prepared for the press till about the 10th, and the whole was not printed till the 16th of January.

I only ask whether you had said to Mr. Murphy, that the report was to be printed in two columns?—I mentioned to Mr. Murphy, that the report was to be printed; whether I mentioned that it was to be printed in two columns, I don't recollect; I am sure if he says I did say so, that it was so.

Do you charge yourself with not saying so?—I charge myself with saying the report was to be printed.

But in two columns?—There I am ignorant; if Mr. Murphy or captain Baillie say so, I am sure I shall not deny it.

If you are not clear upon that; it is not so absolutely impossible but that Mr. Murphy might have said, that captain Baillie would print a third?—It is exceedingly probable.

You said lord Sandwich declared, that if captain Baillie did not resign his office, he should consider it as a defiance?—As a defiance of his right.

Was not the expression used 'as a flag of defiance'?—I am sure I don't recollect.

I think you mentioned, that in the first conversation you had with lord Sandwich, he said, that if captain Baillie would resign, he would make some provision for him?—Yes.

When Mr. Murphy and these gentlemen appeared before lord Sandwich, I think, if I understood you right, lord Sandwich said, in substance, that he would not make a provision for captain Baillie himself, but for Mr. Devisme?—No, he did not say, that he would not make a provision for captain Baillie himself, but that he would make a provision for Mr. Devisme: by the first proposal of captain Baillie, he says he shall be equally pleased if a provision is made for Mr. Devisme; that being the consent of captain Baillie, and the wish of lord Sandwich, there was no dispute upon that head, whether the provision was to be to Mr. Devisme or captain Baillie; but lord Sandwich did not say, he would not make the provision for captain Baillie; but it seemed, as it was then going on, it was agreed that the provision was to be for Mr. Devisme.

Was there, or not, any objection to making the provision for captain Baillie?—I find my-

self under some difficulty in answering that question, on this ground; it seemed to be the consent of captain Baillie, and the wish of lord Sandwich, that the provision should be for Mr. Devisme; lord Sandwich seemed to wish that the provision should be much rather for Mr. Devisme than for captain Baillie; but I don't recollect that his lordship went so far as to say, he would not make a provision for captain Baillie; but he seemed to wish that the provision should be made for Mr. Devisme, whom he called a very temperate man, rather than for captain Baillie.

But the day after you met Mr. Murphy at the coffee-house, in that conversation lord Sandwich said, he would make some provision for captain Baillie; for I understood that Mr. Devisme's name was not mentioned then?—The first conversation I had with lord Sandwich upon the subject, was so exceedingly, in general, a very remote preliminary of a treaty that might not take place; I believe the provision then talked of, was for captain Baillie; but it was a very remote plan; it was only to know whether any kind of treaty might be attempted between Mr. Murphy and myself.

I took your words down, that lord Sandwich said to you, the first time you saw him after talking with Mr. Murphy at the coffee-house, that if captain Baillie would resign, lord Sandwich would make some provision for him?—I believe those are the words that passed between lord Sandwich and myself; but I beg to observe that every thing then was much in generals.

Did there, at that time, appear to be any objection in lord Sandwich to make a provision for captain Baillie?—It did not appear to me but what his lordship was willing to make a provision for him, if all things were properly settled.

There was then no objection in lord Sandwich to make the provision for captain Baillie?—No.

Do you recollect, in the course of the relation Mr. Murphy gave of this conversation to captain Baillie and his brother, that Mr. Murphy frequently appealed to you, desiring, that if he had misstated any thing, that you would set him right?—All along so.

Did you, at any time, contradict any thing he had said?—I don't recollect that I did contradict any thing; but if I did, it was so soon settled between us, that it did never amount to a difference between us in any particular.

Do you recollect, whether captain Baillie, in that conversation, did not say, that he was surprized to find those offers whittled down to threats?—I am very certain he never said any such thing, if your lordship means at the first meeting.

Had you two or three meetings with Mr. Baillie?—I had only two; in the last meeting he might say something of that kind; I do not know he mentioned those very words; the conversation was exceedingly desultory;

I do not know that he mentioned those words; but he might.

Did not captain Baillie always say, that he expected, first to be restored to the office from which he was then suspended?—To the best of my recollection, he did not always say so.

When did he say otherwise?—It is exceedingly difficult to point out the progress of a treaty which never took effect. There were many points agitated between us, for which there was not the least authority from lord Sandwich; but only such proposals, "Suppose his lordship should agree to that, will you agree to it?" In the course of that modification of treaties, it is exceedingly possible that, in some, he might make it a condition that he should be restored; but I don't recollect, that he always laid down that as an essential of the treaty, without which it could not go on.

Can you charge your memory with any one time that ever captain Baillie consented to resign his employments, before he had been restored?—I believe there were times in which he did so.

Be so good as to name them?—I find myself under a difficulty of mentioning the exact time; I cannot call the hour or minute to mind in which he did it; nor do I, at this present time, recollect the stage of the business; but there were stages in the business in which I believe that might be so modified, in which he did not make that condition.

Do you take upon you positively to say, that at any time he actually did give up his claim to being restored?—I cannot take upon me to say, positively, that there was any time in which he would have given up his place, without being restored; but at the same time that I say that, I have also to add, that I cannot say that there was, positively, any time in which he made that as a condition absolutely indispensable.

Did not you, in the last conversation that you had, (the second conversation) tell captain Baillie, that if he did not resign, upon the promise of a compensation which lord Sandwich had made, in the presence of Mr. Murphy, Mr. Cooke, and yourself, he might depend upon being turned out in a few days?—A great deal of every thing which is said, depends upon the words in which it is thrown. I humbly conceive, that if I had made use of the words 'he might depend upon it,' in a certain tone of voice and manner, it would have been exceedingly improper. I told your lordships, that at that meeting I pitied him very much. I think captain Baillie has since told me, I behaved as a brother upon that occasion; he has made use of those very words. I recommended him to do it; but if those words imply any thing of a threat, I am very sure they did not come from me.

Do you recollect what passed at the end of that conversation?—The last thing that my memory serves me in, perhaps it is the most flattering part to me, was the compliment

captain Baillie was pleased to pay me; and the declaration he made, how much he was satisfied with my conduct upon that occasion: I asked him if any thing had happened in which he had reason to complain of me; he said not; upon that we parted.

Do not you recollect having urged some reasons to captain Baillie, why he should not stand out so much?—The great, and, I believe, the only reason was, that I had paid some attention to the question of law, whether they had a right of removing him; and I told him, that I believed they had a right of removing him; and being in possession of that right, I thought he would be mad if he did not retire with the promise of an equivalent, rather than retire without the promise of any, which he must be obliged to do in the course of a few months.

Do not you recollect some other arguments which you used to him about the fate of reformers?—I am very sure I never said any such thing. I remember that at the time that I mentioned to captain Baillie that argument of the power of the Admiralty to displace him; I believe I mentioned to him, among other arguments, as he and his brother are very fond of pictures; the House had suggested to me a circumstance I did not immediately recollect; the circumstance simply was this; I believe it is a story the House has pretty generally heard of. Some person not so pious as every body ought to be, pointing to a crucifix, said to some person who was exceedingly busy in reforming the abuses of the times, *eccò il fato di reformatori*, (behold the fate of reformers.) The House has suggested to me that I did mention it; it is a very well known story, but I am sure I never mentioned it in a manner to frighten him.

I think, in the course of what you said first, you mentioned that lord Sandwich did not think it at all right to make captain Baillie a commissioner at Minorca, because he did not think it proper to put him in any situation, where he had any man to act in concert with, on account of his temper; did you say that or not?—I did say that.

You have said you asked Mr. Murphy, if he thought captain Baillie in earnest, when he offered lord Sandwich to resign, if he had an equivalent. Did you know that he had offered to lord Sandwich to resign, if he had an equivalent?—Previous to that conversation I did not know it, but Mr. Murphy informed me that he had caused several applications to be made to my lord Sandwich.

Had you any intimation from lord Sandwich to speak to Mr. Murphy, or any other person on the business?—I had not even the most distant intimation from lord Sandwich to speak to Mr. Murphy, or any other person upon the business, or to cause any person to speak to Mr. Murphy, or any other person, upon the business; and I had not the slightest wish or design of my own to do it.

Did lord Sandwich appear to you to wish to

prevent an enquiry into his conduct?—He did not seem to me to wish to prevent any enquiry into his conduct; on the contrary he seemed very eagerly to desire it.

Was lord Sandwich's motive in offering capt. Baillie a provision to prevent an enquiry?—I am very certain not; and could give my reasons for saying that.

What appeared to you to be his motive at that time?—I have a reason, in my imagination, which appeared to me as the motive which induced lord Sandwich to act in that manner; it is only a motive which passed in my own mind, I never mentioned it to any individual, therefore I should think I have hardly a right to be called upon for it in this House, but I think it was not a motive to prevent an enquiry; I know captain Baillie had been recommended by several respectable persons; I thought it might be in regard to those persons.

Did captain Baillie mention to you, that copies of his affidavits were then in the possession of any peer of this House?—I understood from captain Baillie, that several of his materials, of his papers, whether that comprises affidavits or not, were in the possession of peers of this House.

Did you ever recommend to him, to let the report of the committee go without reply?—I did, knowing, in general, the very little attention that the public pay to attacks on paper; I did not think the attack of that consequence to merit a reply, but it did not go off upon any difference of opinions of that kind.

It has been said, in an account that has been published, that upon your hearing that copies of the affidavits were in the possession of some peers of this House, you were exceedingly alarmed, is that true?—I knew that long before captain Baillie mentioned it, therefore could not be surprized; I think that standing behind this bar in the course of last sessions I heard some conversation, respecting the business of Greenwich Hospital.

Did the first proposal, about this negotiation, come from Mr. Murphy to you, or from you to Mr. Murphy?—It came from Mr. Murphy to me.

Mr. Butler. I desire that part of the minutes may be read.

Short-hand Notes read as followeth:

“It is exceedingly probable, that the conversation might begin upon that subject (though I do not recollect it exactly) and that it might go on to the case of Greenwich Hospital; in the course of that business Mr. Murphy said, he was exceedingly surprized that lord Sandwich did not accept captain Baillie's offer of retiring for an equivalent provision; that to ruin captain Baillie would be beneath lord Sandwich; to make a provision for him would be generous, and he wondered his lordship did not do it.”

What offer did that relate to? Mr. Murphy said, he was exceedingly surprized that lord

Sandwich did not accept captain Baillie's offer?—I then supposed, and now suppose, that it related to some offer that had been made to lord Sandwich on that subject.

Do you not believe that that related to an offer that was printed in Mr. Baillie's own affidavit?—O no, I do not believe that it did; from the tenor of the conversation, I do not believe that it did relate to any offer in capt. Baillie's publication; on the contrary, from the tenor of the conversation, as Mr. Murphy mentioned to me, that he had sent letters by Mr. Garrick, Dr. Shepherd, and a Mr. Brown of Lincoln's Inn, I rather concluded it referred to those offers than any other.

Whether you recollect in a letter you read to the House, which you wrote to the earl of Sandwich, that mention was made of an answer to Mr. Baillie's book being ready for the press, or being already printed, and that you were to shew it the next day to Mr. Cooke and Mr. Ibbetson?—It is the answer to his book, that it is ready for the press, that it is dated the 16th of December.

What did you mean by the answer to this book? Do you mean the report of the committee of Greenwich Hospital?—The report of the committee of Greenwich Hospital.

Did you call the report of the committee, an answer to his book?—I called it so then.

By whose instructions were you to shew it to the rev. Mr. Cooke, and Mr. Ibbetson?—Because, as they were on the spot, I thought as I was a perfect stranger in the business, I had never heard any thing of the troubles of Greenwich Hospital, or any thing relating to it, till the affair of Greenwich Hospital had been argued; if I am to relate every thing that passed between my lord Sandwich and me upon that subject, I will do it, otherwise I would wish to be excused, as I may involve myself in a predicament your lordships would not wish to involve me in.

It struck me, that in writing that letter, you mentioned the answer to captain Baillie's book, I did not know whether you meant the report or any other answer.—There is no other answer that I know of, but the report of the committee of Greenwich Hospital.

By whom were you employed to print and publish that?—I considered myself employed in that book by my lord Sandwich, and by every other gentleman who conceived himself traduced in that book; I stand here as a professional man; I do not enter into the merits of the book, when I call it an answer; I don't say whether it is or not, or mean to enter into that question one way or the other.

From whom did you receive instructions to take under your care the printing and publishing of that book?—The first that I heard of the subject, was after I had made myself master, as well as I could, of the transactions in the court of King's-bench; I recommended to lord Sandwich and Mr. Ibbetson, and several other gentlemen, that instead of recrimination, of which there is no

end, they should content themselves with printing the report of the committee, and having recommended that to them, I found out a person who could superintend the correcting of the press, (a work I am not qualified for), but I consider myself as the person who printed and published that book.

By whose orders?—Orders I had none, but by the consent of lord Sandwich, Mr. Ibbetson, Mr. Hicks, and a variety of other gentlemen.

Whether you recollect an expression made use of by Mr. Murphy, that if the report of the committee was printed, that they might as well roll themselves in the kennel?—Whether Mr. Murphy used those words, I do not know, but he used words equally expressive in signification, but I do not recollect the immediate words.

Speaking of the motives of lord Sandwich, in answer to a question put to you, you said, you imagined it might be owing to attention to respectable persons that had recommended captain Baillie; whom did you understand those persons to be?—I understand captain Baillie had been recommended to lord Sandwich by persons very high in rank; I understood he had preferred the recommendations of those persons to some other persons high in rank; that being the case, and especially as I have the recommendation of the nobleman, whose recommendation he had postponed, to the recommendations he had received, I conceived them to be persons for whom he must have a high regard, consequently would not do any thing that would appear slighting to them.

I beg you will name those persons?—As I have before mentioned to your lordships, I never mentioned, directly or indirectly, the name of any person whom I conceive it to be; as it was only in my own mind, and I did not mention the person's name, I think I have no right to be called upon; I submit with great respect to your lordships.

You must name who the persons are?—It may be an impertinent thing for me to have considered such a thing; I hope it will be looked upon as a decent thing; I never mentioned it to any body, but I have been told that lord Bute* recommended captain Baillie to his lordship, whether right or no, I cannot say.

Your imagination then was, that lord Sandwich's dispositions of regard to captain Baillie, were out of regard to lord Bute?—I considered that it was so; there is one thing which I shall beg leave to mention to your lordships, which is not directly before the House, but is of some consequence to my character, and it will not take the House half a minute. I

have seen a publication, in which are these words; "To these charges (after stating some) no other answer is thought necessary than a little advice to the Catholic author of that weak, yet insidious answer." I beg leave to mention, that I had not, directly nor indirectly, the least hand in that publication that is alluded to in that book.

You said, the first time you heard about Greenwich Hospital was, when a gentleman distinguished himself so much at the bar; yet you afterwards said, you heard it mentioned below the bar of this House at a former sessions; I wish you would for your own sake set that right?—I will endeavour to explain it; I am sure the House will not take advantage of any thing I say; I beg to mention to the House, that my recollection only served when I said it, (it is in the minutes, therefore the House can recur to them to know whether I am wrong), when I mentioned that it was to ascertain, whether at the particular point of time in which that conversation arose between Mr. Murphy and myself, it was with any design of mine, or arose accidentally; I then mentioned, as the case certainly was, that the first that I knew of any thing then going on, was from the conversation of Mr. Murphy, and from the general applause which the exertion and abilities of the gentleman alluded to had met with; I knew from what I happened to have over-heard here, that there was some general idea of a particular enquiry into the management of Greenwich Hospital; but lord Sandwich, nor no other person, had spoken to me on the subject. I was totally a stranger to the meetings of Greenwich Hospital, and to what had passed at the boards of council there; I was perfectly a stranger to it, till what I heard from the popular conversation of the day. [Mr. Butler withdrew.]

Arthur Murphy, esq. called in.

Mr. *Murphy*. My lords, I have the honour of attending your lordships, in obedience to an order that I have received, calling upon me to give evidence in relation to the affairs and the government of Greenwich Hospital.

My lords, from the situation that I stood in, in that business, and from the delicacy of the part I acted in it, it is impossible for me to come to your lordships' bar, without feeling extreme difficulties; those difficulties amount in my mind to a doubt, and a strong one, whether in point of law, or at least in point of honour, I ought to be examined at all. My lords, I beg leave to state to your lordships, out of what facts my doubts arise; I was counsel for captain Baillie; I never knew captain Baillie, till I was applied to by him to be one of his counsel; I know nothing of the affairs of the Hospital, or of the government of it, but what I learned from the brief that I held in that cause; it cannot be the intention to examine me to the contents of the brief; I understand that I am to be examined to the subject of negotiation car-

* Ever since the foundation of the Hospital, the lieutenant government went in succession to the captains of the Hospital, without any interest, one instance only excepted, in the person of lieutenant-governor Boys. *Orig. Ed.*

ried on by me, set on foot by me, began by me, and carried on with the privity and consent of captain Baillie. My lords, I did in the course of the business, all that lay within the reach of my poor abilities for captain Baillie, both when the business was on in the court of King's-bench, and in all the preparatory steps to it; I was not content with that, I contracted very good wishes in favour of captain Baillie, whom I had never known till I knew him as my client; I knew his brother upon a former occasion, and had a very great respect for him, thence arose the good wishes I felt for him before the term; his business was on in November term.

Q. You will please to confine yourself to what your objections are to being sworn, but don't go into any detail of the business without being sworn?—A. I meant no otherwise than to give an account of the part I acted, previously to any part of the conversation or business I am called here upon; I will cut it short then, and the question I would submit to your lordships is—In the first place, if I am called here by any body but captain Baillie, the law, I take to be clear, that a counsel is not to be examined to the secrets of his client.—My lords, if I am called by captain Baillie, or if captain Baillie renounces the privilege which the law gives him, then my question is perhaps a new one, but it is of great importance to the public.

The question is, whether where a counsel has carried on a negotiation with the privity of his client, and in consequence of that has had a confidential conversation with the opposite party, whether that counsel is liable to be called upon by his own client, to reveal the secrets that he may have learned in confidence. I apprehend your lordships will not endure such a practice. For the first observation that occurs to me upon it is this: the client may say, my counsel shall negotiate; if he succeeds, well and good, if not, he may draw the secrets from the other side, and then come and give it in evidence.

I may be told that both parties may consent to this; but on behalf of myself, and every gentleman at the bar, I beg leave to make this objection to it; whatever wish I had for captain Baillie, if I could have foreseen this day, I would have suppressed it, and would not have gone out of my chamber, or seen any body; I should have told him, I had made the best or worst speech, if it might be so.

If the attending a conversation is to make me a witness, it might as well be at Newcastle-upon-Tyne as here; and there is not a gentleman at the bar, if he is told, wherever he hazards himself in a negotiation for his client, he is to be called upon as a witness, to tell what passed in confidence in secrecy, there is not a gentleman at the bar that will hazard himself; and I beg to add, that all counsel can often do more good out of court, than in court; and for my own part, as I

have said before, if I could have foreseen this day, I should not have been a negotiator for any man. I wish to have it understood, not only for the sake of a noble lord in your House, whom I may say I drew into a negotiation, I desire it to be understood, in justice to myself, and my own character, that I will negotiate with no man to betray him, if it was the lowest man in the kingdom. I would not have it said of me, that the lowest man in the kingdom, if he talks to me in confidence, shall be a sufferer by it; and therefore, my lords, I am now in the place where the ties of honour will be best felt and best understood. When I related to captain Baillie a conversation I had with a noble lord now in your House, it was under an express stipulation, that my name should never be mentioned. This, my lords, I am ready to give upon oath; and therefore, as I am where the ties of honour will be best felt, I submit it to your lordships, whether I ought to open my mouth upon this subject. My lords, I beg to add one word more; I make no objection from a wish or bias in favour of either of the parties, my objection is on account of the extreme delicacy of my situation, standing there as counsel; I know nothing of the matter, but what I knew from my brief, and as counsel; I had a conversation with the noble lord which I wish to be silent about for ever.

The Earl of Sandwich. If any parts of Mr. Murphy's delicacy proceeds from the doubt, whether I wish him to be heard, I will readily relieve him from that difficulty; I have that opinion of Mr. Murphy's honour; I had a transaction with him in a public matter once; I found him a man of honour; and there are not many people, perhaps, that I would have seen upon a business of that kind, except that gentleman; I mean persons that might have been employed; but he has my entire consent, my wish, and desire, that he would inform the House of every thing that he knows relative to that matter; and it is proper for me to add one circumstance, that I think it will be an hardship upon me, if he does not say all he knows, because there has been one gentleman of the law already examined; and though I know he is a man of too much honour, I flatter myself every body that knows him, must know he is incapable of saying any thing but what is strictly true; yet it will be a very awkward transaction, if my lawyer is examined, and the lawyer on the other side is not examined; I wish that this matter may go clearly and fully into the world, that the lawyer employed on one side, and the lawyer employed on the other side, gave the House every information that they had it in their power to give; and for these reasons, I do most sincerely desire and request of Mr. Murphy, that he would submit to be examined, I do also, as a matter of justice, and as a matter of respect due to this House, call upon captain Baillie to make him the same request.

Mr. Murphy. My lords, my principal reason for troubling your lordships with any difficulty of mine, was, that I do conceive every gentleman at the bar is concerned in it; for I do beg leave to say to your lordships, that no gentleman at the bar will hazard himself in negotiations or compromises, if it be once understood that they are liable to be called upon to disclose what passes in secret negotiations, in fair and honest compromises between parties; if it be once established as a precedent, I do conceive the public will suffer by it; for no gentleman at the bar, as I said already, would leave himself to be liable to be called upon by it. It might happen I might be called upon at the time I might be upon my circuit. If it is established here, that gentlemen at the bar are liable to be called upon, it will be of very pernicious tendency; but if it is not understood to be compulsory upon me; if it is not understood I am compelled to speak, there is a word has dropped from the noble lord, that strikes me a great deal. His lordship says he shall consider it as an hardship. I consider myself as standing a middle man, counsel for both. The honour of both is in my hands, therefore I profess myself ready, if it is not understood to be compulsory upon me, and upon the rest of the gentlemen at the bar. I make this objection, in order to have the decision of this great assembly. To have it understood, whether gentlemen at the bar are compelled to be called upon. If it is understood they are not, I shall make no objection to give my evidence.

Captain Baillie. I beg to say a few words. It is certainly a misfortune to me, that I am not able to follow all the oratory and rhetoric of Mr. Murphy; but as I told your lordships before, I say again, I have no secret; I have fallen a victim to the resentment of lord Sandwich, and to various intrigues one way or other; and as I have no secrets, I wish that the whole of the transactions of Greenwich Hospital may be probed to the bottom. I wish Mr. Murphy to be examined, and I hope he will prove himself a man of honour.

Mr. Murphy called to the bar again.

You say you speak on behalf of yourself and of the whole profession; is that literally so? Has there been any meeting of the profession?—I speak only from my own feelings, my own ideas upon the subject, and a few gentlemen at the bar I had talked with, and they all approve of the objection I have made. I certainly have no commission from the bar.

Mr. Murphy sworn.

Were you present at any conversation between lord Sandwich and Mr. Butler, and Mr. Cooke, upon the subject of captain Baillie?—I shall beg to be in your lordships' judgment, whether you would have this matter come out piece-meal, as questions may occur, or

whether I shall relate the whole as the matter happened?

The House ordered Mr. Murphy to give a narrative of the transaction.

Mr. Murphy. Having been counsel for captain Baillie some time in the month of December last, what day of the month I do not know, but it was of a Friday; having attempted at that time, with three or four different gentlemen, to set on foot a negotiation in favour of captain Baillie; and, as I understood, under his authority, it did fall in my way, by mere accident, to have a conversation with Mr. Butler at the coffee-house in Lincoln's-inn; I went in there, (having come a little way that morning from the country) about eleven o'clock, by mere chance. I found the only gentleman in the room was Mr. Butler, whom I knew as a gentleman in the inn; and my acquaintance with Mr. Butler extended no farther than just an acquaintance in Lincoln's-inn; and as far as my acquaintance went, a very respectable acquaintance I thought him. I sat down with him; a conversation arose upon the topics of the day; at last Greenwich Hospital was mentioned, and I believe by him. I think he asked me what I thought of the affairs of Greenwich Hospital; I told him that I had been counsel, and that I had certain impressions upon my mind, contracted and conceived at the time I was counsel. I told him very freely my mind; I told him that I had attempted before the term, in the term, (the November term I speak of) and after the term, with three different gentlemen, to set on foot a negotiation with lord Sandwich. The first attempt that I made was with Mr. Garrick, in the latter end of October; I went to Hampton to him; I found with him a gentleman that I never was in company with before, Dr. Madan; I did not hesitate, Dr. Madan being present, about the subject; I opened my mind to him, and I told him, that I had been reading affidavits that were voluminous; and that it would relieve me from a great deal of difficulty, having been asked to read 200 brief sheets of affidavits drawn by captain Baillie himself, if I could be relieved from that, it would be a great pleasure to me; I said, Mr. Garrick, you can do that favour, if you will only tell lord Sandwich, that he has offered to resign his office of lieutenant governor, if an equivalent provision should be made for him.

When was this conversation?—The latter end of October.

Then that relates to the proposal sworn to in captain Baillie's affidavit*?—He swore in his affidavit, that he had made that offer several times. In short, without troubling your lordships any more with the particulars

* Relates to captain Baillie's affidavit sworn to in the King's-bench, which could be no secret. Orig. Ed.

of what passed between Mr. Garrick and me, he did undertake that he would mention to lord Sandwich, whether he did or did not, I never learned from Mr. Garrick, because I have been so unfortunate as never to have seen him since. In the term every body knows what passed, the rule was discharged with costs; I should have said, that a Dr. Shepherd, of Cambridge, called upon me before it came on in the King's-bench; and knowing that he was well acquainted with lord Sandwich, I told him the same story I had told Mr. Garrick, and wished the same proposition to take place. Nothing came of that, the business came on in the court of King's-bench. I should have said I told captain Baillie what I had said to Mr. Garrick and Dr. Shepherd; as well as I recollect, he was in the next room, when Dr. Shepherd was with me in my chambers. As soon as Dr. Shepherd was gone, I told captain Baillie what had passed, and that I was aiming at a negociation. Captain Baillie had given to Mr. Bearcroft, my leader in the King's-bench, and to me, authority to negotiate for him to that effect, and saving his honour, which we told him we should be certainly very careful of.

On what day did you tell captain Baillie that?—The beginning of November term; I cannot say the day; it was before the business came on in the court of King's-bench; for Dr. Shepherd came to ask whether a new trial should be moved for in the King's-bench, in a cause he had been concerned in; by which I know it must have been at the beginning of the term; because by the rule of the court new trials must be moved for within the first four days of the term; the business coming on in the King's-bench, hearing no more of this affair, and not having myself the honour of knowing lord Sandwich sufficiently, to think at all of going near him upon the subject; for with regard to lord Sandwich, I think it necessary to mention, that I can hardly assume the word acquaintance. In the year 1768, I think it was, there was a business of lord Halifax depending; a great many gentlemen and noblemen of consequence interested themselves in what belonged to lord Halifax; I had the honour of having some degree of lord Halifax's confidence in that business; we had several dinners at the Star and Garter, in Pall-Mall; and two or three at Hampton; I think I had the honour of being in company with lord Sandwich twice in Pall-Mall, and once at Hampton; that was in the year 1768. In the year 1769, I think, (but I know it was in the year that Mr. Brown, of Hampton, was sheriff of Huntingdon); he being sheriff in 1769, he being to sup at Hinchinbroke, I had the honour of being invited to sup there; and understood I was to meet with Mr. Brown; from that hour, to the time that I had the honour of seeing lord Sandwich upon captain Baillie's business, I never had the honour of changing

one single word with him, or being in his company in any place whatever; so that upon these accidental meetings, relative to lord Halifax's business, I did not ground any pretensions of acquaintance; therefore, I did not think of going near lord Sandwich about the business; the term being over, and the rule discharged with costs, I did attempt it in another way, with a gentleman in Lincoln's-inn, whom I knew to be intimate with lord Sandwich; I hope I may name him without involving him as a witness; Mr. Brown; I did speak to him several times, and tell him my mind most freely; all I learned from him was, that he had reported my conversation to lord Sandwich; it came to nothing; only that lord Sandwich expressed himself in civil terms with respect to me. When I went into the coffee-house in Lincoln's-inn, I did not know that Mr. Butler was at all acquainted with the business; when the Greenwich business became the subject of conversation, I did then, most freely, tell him my mind; and what had passed; the attempt with Mr. Garrick; and so on. I told Mr. Butler, I wished, very much, that somebody would suggest to my lord Sandwich, that whatever his ideas might be, or whatever various people might tell him upon the subject, that still mankind might think, if captain Baillie's ruin was aimed at, if he was to be discharged at his time of life, and after a number of years in the service, and swearing, as he did, in the court of King's-bench, that he was ruptured on both sides, that mankind would say, if his ruin was aimed at, it would be cruel; on the other hand, if lord Sandwich felt himself acting above those little resentments which actuated many of mankind, that the world would say, it would be acting very noble not to aim at his ruin; and therefore I said it would be noble, on the part of lord Sandwich, if he would embrace Mr. Baillie's proposals, upon an adequate provision. Mr. Butler seemed struck with this; he told me that he was employed relative to the affairs of the Hospital; that he had prepared a book, since printed, (not then printed) in two columns, which I dare say many of your lordships have seen; he told me he would shew it me, whenever I pleased, and, I believe, did shew it me a day or two after. Finding he was employed, it struck me; I paused upon it; I considered, in my own mind, whether I should go farther with him; finding he was acquainted, and employed, I did go as far as I could, in endeavouring to promote those sort of complaints in favour of captain Baillie; I conceived myself authorized to do it, by the general authority Mr. Bearcroft and myself had before the term began,* and was never

* Whilst six informations, for a libel, with great weight of power, were hanging over captain Baillie, and his destruction threatened, it was natural enough for him to wish to accommodate with lord Sandwich, in a contest so unequal; but after all the parties

revoked in any of the conversations we had upon the subject; he called upon me three or four times a week may be; it was never revoked at all; therefore I did conceive myself to have authority to make the proposition, on his behalf, that he should resign, and have an equivalent provision. Mr. Butler said, he would mention it to my lord Sandwich, and would contrive to see him that day. I begged of Mr. Butler to take care not to represent me as intruding myself too much; I told him I had attempted it with other people; however, I told him I did understand from one gentleman that lord Sandwich had expressed himself with civil terms with regard to me; and, therefore, I was not much afraid of his representing my conversation; accordingly we parted; he undertaking, as I understood, that he would see lord Sandwich upon the subject. The next morning, a Saturday morning, he called upon me, about eleven o'clock; he shewed me a little abstract of a letter (three lines of his own writing) purporting to be a letter, to inform lord Sandwich that he had some conversation to communicate to him; he shewed me an answer of three lines from lord Sandwich; he then told me he had been with lord Sandwich, and did not find his lordship in a disposition to act cruelly, or with revenge; not in that disposition at all: I had particularly said, that the ruining of him would be, perhaps, by the world called the mark of a little mind; the letting the man down, without ruining him, if he was to be removed from the Hospital, the giving him a provision, would be the mark of a great mind. Mr. Butler said, his lordship said he was willing to shew the world he did not want to act with a little mind. I said I should be pleased if I could contribute to effect this business; he asked me if I was serious in the proposition; I said, certainly; that I conceived I had an authority. Is captain Baillie serious in it? I said, I think I can see him this day, and will tell you. I sent to him as soon as Mr. Butler went; I saw him and his brother immediately, at my chambers; I told them what passed between Mr. Butler and me the day before; how accidentally I met him; how little I knew, in the beginning of the conversation, that I was talking with an acquaintance of lord Sandwich; how I had pushed it, when I knew he was; and that it ended, in short, in his undertaking to go to him; now he has been with lord Sandwich, and I find lord Sandwich is not so vindictive against you as you imagine. Do you approve of the proposition I have made? Both of them did. Do you

were defeated, and the several rules discharged, and discharged with costs, (which seldom happens in the Court of King's-bench) to the general satisfaction of an indignant audience, and captain Baillie's affairs wearing a very different aspect, he then had no idea of proposing an accommodation, though he was willing to listen to any that might be made on the part of lord Sandwich. *Orig. Ed.*

choose I should go on with it? (I cannot be supposed to be speaking to exact words, when I say this.) Do you choose to go on with it? Yes. Then I have a question to ask you, capt. Baillie: Can you judge of any mode in which you can have this provision, without being appointed to a public office? For I am desired to tell you, lord Sandwich will not appoint you to a public office, because the same thing will happen, as he thinks, wherever you go; and, therefore, if it can be done, without appointing you to a public office, I understand, from Mr. Butler, who is just gone out of my chamber, that the noble lord has no objection to it. A proposal I took down in writing; I don't know whether it has been mentioned; the proposal was, that captain Baillie conceiving that captain Kirke (as well as I remember) who is a commissioner of the victualling, and would be glad to become lieutenant-governor of the Hospital; and, therefore, says captain Baillie, if lord Sandwich will appoint my son-in-law, I think, a Mr. Devisme, commissioner of the victualling, and let me retire upon my half-pay, I then will resign, and captain Kirke may be appointed lieutenant-governor of the Hospital. I took that down in writing, I thought proper to propose myself; and it was added to it, upon my suggestion, that captain Baillie should give up all papers, pamphlets, all printed cases, of whatever denomination, remaining in his hands, in order to shew a disposition to act fair, and retire, in peace and quietness, from the Hospital. That was added to it. Mr. Butler, about three or four o'clock, sent in his name; I begged captain Baillie and his brother to step into another room; they did; Mr. Butler came in; my paper was interlined and blotted; I read to him from it; I told him that was the proposition; he undertook to see lord Sandwich upon it; and we parted. When he was gone, I told captain Baillie what had passed between Mr. Butler and me; and so it ended for that day. On Monday following, I happened to be a little way out of town, I think at Mr. Thrall's at Stretham; there I received a letter from Mr. Butler, in the evening, informing me, that he had seen lord Sandwich that very day, and that he found him still in the same disposition; and he believed my proposition would take place; that if it suited me, lord Sandwich would be glad to see me the next day, at the Admiralty; I came to town the next day, Tuesday; I went with Mr. Butler to the Admiralty; we were not there two minutes before we were shewn up stairs to my lord Sandwich; the noble lord's first words were, I am willing to converse with you, Mr. Murphy, upon this subject, because I know, or believe, (I don't know which) that you are a man of honour.

My lords, it is from those words that my pain arises; I did hope, after hearing those words, that I never should be called upon to say a word upon the subject; however, my lords, the conversation then went on; lord

Sandwich said, that the unfortunate disputes* between the two admirals had kept the Admiralty in a very great hurry, and in a few minutes he must attend the board. I think I am going to speak very distinctly to the words, for my memory has been well refreshed upon the subject, having had this order so long. My lord Sandwich told me then, seeing there is but little time to lose, and he must go to a board; he then said, Sir, we will at once come to the subject of captain Baillie's commission; the affairs of the Hospital are come to this pass, that he must quit it; I cannot act with him myself; the directors cannot act with him; the directors have presented a new memorial; and I have no hesitation in saying, that if I must quarrel with them, or with him, he is the man I shall quarrel with; if captain Baillie imagines that he is to bid me defiance, he will find me extremely firm, and I shall most certainly dismiss him upon the ground of the report for misbehaviour; if I do dismiss upon that ground, I shall dismiss him without thinking myself called upon ever to trouble my head about him again; his place may be, I think he said, I heard you estimate it in the King's-bench at 600*l.* a year. I remember being asked by the Court what the value of his office was, and I did say I understood the salary was 400*l.* a year, and that the advantage of apartments, coals, candles, beer, and whatever other things are there, might reasonably enough be estimated at 200*l.* a year more, therefore, I believe, I said in the King's-bench that the office was worth 600*l.* a year; I believe lord Sandwich said he would not enter into conversation about it, that it might be so; but I know, says he, if a man loses 600*l.* a year, and has no other fortune, he must be distressed; I could charge him with ingratitude; I do not wish to do it; if he is dismissed, it may be said to be cruel and vindictive; but, thank God, I have no such disposition, and turning to me, he said, I dare say you see I have no such little mind; he said the scheme that he had proposed of his son-in-law Devisme, could not take place; that he had seen captain Kirke; and that he had never thought of the Hospital; if that could be done, I have no sort of objection for repeating it again; I do not want to hear of his distresses; but the fact is, he cannot stay in the Hospital; and as to appointing him to a public office, I cannot appoint him to a public office, because I am very sure the same thing will happen again, said lord Sandwich; I don't want to speak ill of him at all; I believe there may be a great deal of right, and a great deal of wrong in captain Baillie; but whether right or wrong, his passion in the end will always set him wrong; something broke in; lord Sandwich said, if he is to be dismissed, my determination is never more to trouble myself

about him; if he resigns his office in the way you have proposed, I certainly will as soon as I know how it can be done, if he would shew it me; but perhaps I may see it sooner myself, but the business of the Hospital cannot stand still, and I cannot act with him, and therefore I shall be glad to see you again in three or four days: with regard to the offer of papers that he makes, I do not accept of it; he has nothing to give up. The duke of Richmond has given notice of an enquiry in the House of Lords; I was not present when he did it; I have seen his grace since, and told him I was ready to meet the enquiry whenever he makes it, and therefore I accept of no papers.

I have now, I think, related with as much precision as human memory can supply a man with at the distance of time. I think I have related all I heard from lord Sandwich; a gentleman present, the rev. Mr. Cooke, did say; that book* your lordship has seen printed in two columns, must be published; I turned round immediately, and said that would do no good, publications will promote a paper war; and if there is to be an enquiry, it ought to be suppressed; and that as those matters were in court, the publication of them out of court might be a libel, and therefore I advised him against it; in that part of the conversation, lord Sandwich did not say a single syllable; his lordship then got up, said the affairs of the Admiralty called his attention at a board; he should be glad to see me in two or three days' time; I came away; I am convinced in my own mind, upon the most exact recollection, that is the whole substance of what passed; I came away, and told Mr. Butler and Mr. Cooke below stairs, that I was extremely pleased with my negotiation, for I was in hopes then it would succeed; however, I told Mr. Butler, who went back with me to Lincoln's-inn, that I should appoint captain Baillie to see me next day at twelve, and should be glad he would be present. I did send to captain Baillie; but captain Baillie came that day, being Tuesday, when I gave him a hint, but not fully of the nature of the business; I gave him a hint that he might act his part as coolly as possible, when he met Mr. Butler the next day at 11 o'clock. The next day captain Baillie and his brother did meet at my chambers; I then, as if I had not seen captain Baillie, opened the matter, and told captain Baillie that the first words out of lord Sandwich's mouth to me were the words I have mentioned, and therefore mentioned to him what I felt a demand from him, that my name should never be called in question about the business; he promised me it should not: I told him that all negotiations of the kind ever since I have known any thing of the bar, or had any thing to do with business among gentlemen, all no-

* Alluding to the admirals Keppel and Palliser. *Orig. Ed.*

* The report of lord Sandwich's committee, arranged for the press by Mr. Butler, by order of lord Sandwich. *Orig. Ed.*

gociations of the sort were considered as sacred, and that I never knew between gentlemen any party take an advantage, if negotiations were not successful; therefore I stipulated that my honour should be taken care of, and that I never should be mentioned in the business. I then related what passed between my lord Sandwich and myself; it did not happen to please captain Baillie; the particulars, I suppose, I need not relate; a great deal of warmth broke out; I, at last, said I could not sit there, if they behaved so intemperately; I begged he would be kind enough to meet next day at eleven at my chambers, and begged of captain Baillie to consider of the matter coolly, to see the rest of his counsel; and I sent to know while they were with me, whether Mr. Beaacroft was at home, he was not; I sent to know whether Mr. Erskine was at home, he was not.

Do not spare the detail; that conversation you say was warm?—The warmth was, captain Baillie would not resign without an equivalent provision before-hand; I told him my opinion; it was of very little consequence to him, whether he had it before or after; sure I was he would have it; I asked him whether he thought that lord Sandwich would choose me, a man with whom he had the sort of acquaintance I have mentioned to your lordships, that he would single me out, who I hoped, as far as known in the world, was known to be a man of spirit; whether he would single me out for that, and if he thought his lordship would deny it afterwards; if he does, said I, I will release you from any promise of secrecy, and stand forth and avow it; I have no doubt you will get it; there is no law in it; it is a matter of prudence; consult your friends about it; it was agreed they should meet next day at my chambers.

Mention what he said in warmth and passion?—As my client, I wish not to mention it.

Q. to captain Baillie. Have you any objection to it?

Captain Baillie. I have no secrets in the world.

Mr. Murphy. To remember what passes in the hurry of desultory conversation, all those interruptions that violence and warmth create, it is difficult to recollect every thing, and I really wish not to do it; the result of it was, he would not, without having an equivalent provision, resign his office. In the midst of a great deal of warmth, he did say, that with regard to lord Sandwich, if he stood alone, without advisers of him, belonging to the Hospital, he would trust him with any thing; but I am afraid of the people about him; I am afraid of their advice. But, however, without attempting to recollect particulars of that sort, that is of too much difficulty for me, the result of the whole was, that he was afraid of those people in the Hospital that might have lord Sandwich's ear, and might give wrong advice; he was afraid it would be imprudent in him to trust to a provision being

made after resignation; therefore a meeting was to be had next day.

How came you to think it was an imputation upon captain Baillie to have a good opinion of lord Sandwich; because I desired you to mention the instances of passion and violence?—I did whisper to captain Baillie, that I recollected one instance, that I thought it would be justice to tell, because that was not any imputation thrown out by him against lord Sandwich.

What imputations of warmth and passion?—Very violent cursing and swearing, and violent oaths.

Mention them?—I cannot tell them. I took the liberty to say to captain Baillie, if he could put me in mind of any thing that was to his advantage, I would tell it; I don't recollect, only that the conversation was so warm, and so much passion in it, that I thought myself spending my time very ill, to sit two or three hours at the mercy of any gentleman that thought proper to put himself in a passion, when I was acting only for his good.

Do you recollect any other instances of passion?—The whole was for two or three hours, from the time that this proposition was made upon the subject, and upon the argument, whether he should resign and trust for the provision to be made for him, or not; it was of no consequence at all, whether he had it before or after that, I was sure he would have it; that was the subject the whole time, and a great variety of very vague matter, God knows; but it ended in deferring the matter till next day. The next day he remained in the same way of thinking; I think he then came without his brother; I desired Mr. Butler to take down the answer, and to take it down in as genteel terms as he possibly could; I read it when it was taken down; I then said, that the answer, in my opinion, amounted in plain English to this, I will not trust you. I did not like being the bearer of that message; therefore, said I, Mr. Butler (after he had it written down) he wrote it down in terms that I approved of; I said, be so good to tell lord Sandwich that is the naked answer; he said he would do so. I begged of him to make my apology to lord Sandwich, to tell his lordship I saw the hurry they were in; I thought it would only be obtruding; if lord Sandwich wants to see me, I will wait upon him; we all parted. The next day, being appointed for Mr. Butler to come and give lord Sandwich's answer, they met again; Mr. Butler was then very short; the conversation was very short; he took the paper out of his pocket; he said, I read this paper; lord Sandwich said, there is an end of it, I will have no more to do with him. I turned to captain Baillie and said, I foresaw as much; I wish you had taken my advice; but I did not press it too much; I thought it a delicate business to obtrude my advice, but my opinion was, I thought you had better comply and take it. I saw no more

of the noble lord, nor never laid my eyes upon that noble lord, till the other night I was here in the House, and saw him as I do now. I have a reason to add, that I never saw him before, from the time I supped at his house at Huntingdon, till the time I conversed with him respecting captain Baillie, I have not had any intercourse with him whatever; and, from that time, I have not had, directly nor indirectly, by letter, message, or any human being, the smallest intercourse with that noble lord.

You said before, you were upon oath, that you understood you could not be examined as to the brief you had received from captain Baillie?—I did say, that I supposed nobody meant to examine me to the contents of the brief I held as one of capt. Baillie's counsel; I did suppose that, to be sure.

Upon what ground did you suppose so?—Because I never yet heard of any counsel's being called upon, at a distance of time, to recollect his brief, after it has been given up to his attorney, with his name signed upon the back of it; for my own part, I always discharge my memory of it.

Is a brief the property of the counsel or client?—Of client; and, for that reason, it is returned, with the name of the counsel at the back of it.

And do you therefore think nobody has a right to examine that brief, but the party himself?—My idea was, that I was not to be examined to the contents of my brief.

You have said, that Mr. Butler, when you met the first time, began upon the affairs of Greenwich Hospital by asking you, what you thought of them?—Yes.

Do you mean by that to say, that you began the negotiation at that time with Mr. Butler?—Not till he informed me, that he was acquainted with lord Sandwich, and employed, I think, by him; then it was that the proposal of it was made.

I think you said, that Mr. Butler acquainted you, the first time you saw him, that he was employed in the affairs of Greenwich Hospital, and that he had an answer to captain Baillie's book, prepared in two columns?—He told me so.

The first time you saw him?—I never saw him, but that once, previous to the subsequent meeting I have spoken of; and the first time I saw him was at Serle's Coffee-house.

He informed you he was employed in the affairs of Greenwich Hospital, and had prepared an answer or report of the committee, in two columns?—Not the report of the committee; that pamphlet, which I believe your lordship has seen in two columns, extracts from the report in answer to captain Baillie's;

not that he had prepared the report, but that he had prepared that extract, and he shewed it me a few days afterwards in manuscript; that publication which is in print, I am told, but I have never seen it in print.

Was it then finished when he shewed it you?—I don't know, I looked over a little of it.

Was it in two columns?—Yes, in manuscript.

Did you make use of any expressions in the course of this negotiation, that if this was published in two columns, that captain Baillie would print a third to it?—I said, I should advise him to it, at the same time telling them all to take care, that publications of what passed in court might be libels, if published unnecessarily out of court.

You have stated some negotiations having been begun by you with other persons, were they by the direction of captain Baillie?—I understood Mr. Bearcroft's authority; Mr. Bearcroft, himself, told it me; and I understood it afterwards, from captain Baillie, that it was so; and I understood that we were both before November term, both had his authority to negotiate for him, taking care of his honour, which I told him we naturally should do; it remained in that manner, that general authority, I had no other than that general authority unrevoked in all the conversations I had with him afterwards, which were frequent, three or four times a week, just as suited himself; I was always open to him.

I understood captain Baillie, that before the term, upon Mr. Bearcroft's suggesting to him, whether he had any objections to any negotiations being entered into, that he did give him an authority; but did captain Baillie give you any authority?—He did the very same; because, when I told him what Mr. Bearcroft said to me, I said, am I to understand, that we are at liberty to negotiate for you; he said yes, always taking care to have an equivalent provision, and taking care of his honour.

Was not this before the term?—Yes.

Was not something said by Mr. Bearcroft to the Solicitor General upon that subject?—I believe there was; not in my presence; I myself spoke to the Solicitor General; I answered very indistinct; but I understood he had no authority to negotiate.

Did you acquaint captain Baillie with that?—I believe I did.

Did not captain Baillie look upon it, in consequence of that answer, that all negotiation upon that subject was at an end?—No; I told him of the attempts I had made, to get at a negotiation if I could. It was with no view in the world, but to serve captain Baillie; and I certainly will not be subject to these examinations in future, by negotiations of any sort.

Whether you did not go to lord Sandwich, in consequence of a letter from Mr. Butler—that lord Sandwich desired to see you?—I be-

* Alluding to a brief that was sent for and delivered to a great law lord, when the business came into this House; not Mr. Murphy's; Mr. H——. Orig. Ed. I know not what this means.

lieve I mentioned, that the origin of this business was on a Friday; that on the Monday following I received, while I was at Mr. Thrale's, a letter from Mr. Butler, informing me he had seen lord Sandwich that same day, and found him in some disposition to do what I wished, and that lord Sandwich would be glad to see me at the Admiralty, and I did go the next day.

But, previous to that, had not there been some proposals from lord Sandwich, mentioned by Mr. Butler, to captain Baillie?—On the Saturday morning, after I had seen Mr. Butler, he came to me, and informed me, that he had been at the Admiralty, and that he did not find lord Sandwich in any disposition to act with spleen or resentment, and he asked me whether I was serious in the proposition I had made? I told him, yes: he asked me whether captain Baillie would confirm that? I told him I would see captain Baillie that day. He asked me if captain Baillie could point out any mode of having the provision made for him, because lord Sandwich would not appoint him to any public office; that was the proposal Mr. Butler mentioned to me, and captain Baillie gave an answer to it, when it was communicated to him.

I beg to know, distinctly, whether you did not mention this to captain Baillie as a proposal coming from lord Sandwich, to be mentioned by you to him.—Most totally—most decisively the reverse. I told him the whole of the conversation, most distinctly, between Mr. Butler and me, how it happened. The degree of acquaintance I had with Mr. Butler, when, and in what time it came out, that he was acquainted with lord Sandwich—how I had carried on the conversation in order to get at a negotiation, and told him he had been with me that morning in consequence of it; therefore, do you approve of it? He did—Can you point out a mode?—Yes; he did point out a mode—Mr. Butler sent in his name, I did not let them meet; Mr. Baillie went into another room, and Mr. Butler saw the proposal written down.

I beg to know whether you did not mention this to captain Baillie, as a proposal coming from lord Sandwich, to be mentioned by you to captain Baillie?—I say, most decisively, I did not; but related it to him in the manner I have related it now.

Will you be so kind as to look at that paper?—(Shewing Mr. Murphy a manuscript paper of his own writing.)—I did expect this, and I beg to call your lordship's attention to it—Captain Baillie, soon after this business was over, called upon me; he told me he had related the story, and had not mentioned my name; I told him he was right not to mention my name, but it would be for him to judge whether it was proper to mention it at all: he came to me, and said he had been pressed to tell who was the counsel; I told him I did not chuse to have my name known—he came afterwards and said, they wished to examine

me; I said I would not be examined; I said my name ought never to be mentioned; I asked what he could get from it? I think a disgrace falls upon a man that offers to disclose a secret negotiation; and what will you get from it?—Why, says he, lord Sandwich would not offer me a provision if he did not think me innocent. No, said I, quite the reverse; when his own words are, I don't want to be cruel or vindictive, and repeating what lord Sandwich had said upon the subject, I said, I think you are innocent; but I don't think it proves lord Sandwich thinks so. I said why examine me? are there not Mr. Cooke, and Mr. Butler? why give me the trouble of an examination. Then I was not to be examined—then you will examine Mr. Butler, and such a man, and such a man. I was willing at all times to give him every assistance. I said, do you know how to go about examining these people? I took a pen and ink and scribbled the examination of numbers—whether those examinations have been made any use of I don't know; for I have not attended much here. Now, Mr. Butler, what signifies calling him, it is bringing a witness from the other camp; if you could examine him, so as to shut out circumstances, and get short and dry answers to questions, you do something; but if not, it will come out upon cross-examination. I took a pen and ink and scribbled something, and it is called the examination of Mr. Butler. Mr. Baillie told me, the other day, of this paper; I said, was not I promised, that that should be thrown into the fire, and nothing should be known about my concern in the business? This is as artful an examination as I could put upon paper. In this paper it will be found, that lord Sandwich said, he did not wish to see captain Baillie ruined; he was not spiteful and vindictive—those words are written down there, that he should be upon his guard not to get those words out, if he could avoid it. This was done at the time that I understood that I was not to be examined; and, therefore, I was willing to give every assistance. In the month of February, a man came in, when I was going on the circuit, and delivered me an order to attend the House of Lords; I said, I am going the circuit to-morrow morning. He said, 'Here is an order from the House of Lords, and I must have 6s. 8d. for it.' I said, give my humble service to the House of Lords; when they send me good news I will give you 6s. 8d. but I will not give you 6s. 8d. for that. Therefore whatever my opinion and my wishes may be about captain Baillie, I have kept as clear as I can; and I am astonished to see that paper here.

Q. to Mr. Murphy. I will read some of it.
"Were you present at any conversation between lord Sandwich and Mr. Murphy?—He must say that he was.

"Was it at the Admiralty?—It was.

"Did Mr. Murphy go there in consequence of a letter from you, informing him that lord Sandwich desired to see him?—He must say that he wrote a letter to that purpose.

"Before you wrote that letter, had you made any proposals, on the part of lord Sandwich, to be mentioned by Mr. Murphy to captain Baillie?—He must admit, that on Saturday the 12th of December, he did tell Mr. Murphy, that if captain Baillie would resign his office of lieutenant governor, lord Sandwich would make an equivalent provision for captain Baillie."

Then it goes on with the remainder of the examination.*

* Q. Was captain Baillie desired, in the terms of that proposal, to point out any mode of making a provision for him?—A. He must admit that lord Sandwich said, if captain Baillie would point out any practicable mode, that it should be done.

Did captain Baillie propose that his son-in-law, Mr. Devisme, should be made a commissioner of the victualling, in the room of captain Kirk, in whose favour captain Baillie would then resign the lieutenant governorship?—He must admit that Mr. Murphy gave that answer on the part of captain Baillie.

Did captain Baillie desire that his suspension should be taken off before he resigned?—He must admit that he did.

Did captain Baillie desire to have a ship of war, that he might resign with honour to himself?—He must admit the fact.

Was it not in consequence of the witness's letter, that Mr. Murphy went to the Admiralty?—He must say it was so.

Who was present at the Admiralty when Mr. Murphy waited on lord Sandwich?—He must say lord Sandwich, the witness himself, and the Rev. Mr. Cooke.

In that conversation, did lord Sandwich say any thing about the proposal relative to Mr. Devisme?—He must say that lord Sandwich said, he had seen captain Kirke, and that mode would not do, because captain Kirke had no thought of Greenwich Hospital.

Did lord Sandwich say, that if captain Baillie would resign, he would make an equivalent provision for him?—He must say, that lord Sandwich said, "He was not spiteful or vindictive, and that he did not wish to 'see captain Baillie ruined,' and if captain Baillie resigned, without giving lord Sandwich the trouble of dismissing him, he would provide for him as soon as possible."

Did lord Sandwich say that, if captain Baillie would not resign, he could turn him out, and do nothing for him?—He must admit that these are the words, or to that effect.

Was this conversation communicated to captain Baillie in the presence of Mr. Butler?—He must admit that it was at Mr. Murphy's chambers, in Lincoln's-inn, the persons present being Mr. Murphy, Mr. Butler, captain Baillie, and Mr. William Baillie, brother of captain Baillie.

Did captain Baillie make answer, that unless an equivalent provision was made for him before hand, he would not resign?—He must admit this, as captain Baillie has the answer in Mr. Butler's hand-writing; the paper itself may be shewn to the witness, who must admit his own hand-writing.

When captain Baillie made that answer, did you

This seems to me to be extremely different from what Mr. Murphy could have any objection to its coming out; for it is precisely what has come out in his own examination. Was not captain Baillie desired, in the terms of that proposal, to point out something? If it was a proposal of Mr. Murphy alone, captain Baillie was led into an error. Therefore, my question upon the whole of this is, Whether (Mr. Murphy having seen this paper, in his own hand-writing) if captain Baillie was led into the error of thinking the proposal came from lord Sandwich, whether he was not led into it by Mr. Murphy?

Mr. *Murphy*. It was long after captain Baillie had told me he wished to examine me, I asked him, "Have you told the person, that wished to examine me, that it began from me? Have you told them what passed between Mr. Butler and me, on Friday? Have you told them I sent the proposition to the Admiralty, by Mr. Butler? Have you told them lord Sandwich refused to accept the papers? Have you told them lord Sandwich was ready to meet the enquiry? Have you told them that he said he did not want to act cruelly and vindictively? Tell them all these things, and see whether they will think it an object to examine me?" With regard to the paper, your lordships see it is every word of it calculated, if the party will give dry answers, to shut out what passed on Friday; for then it would look as, if it came from lord Sandwich, and not from me; but if he does not give a dry answer, he will say, yes, I did, on Saturday; but it was in consequence of what was offered me on Friday.

Did you tell captain Baillie this paper was drawn up with a view to shut out what happened on Friday?—Yes; I told captain Baillie I did it with that view, to avoid the Friday, and make it as artful an examination as possible; and he promised to burn it, as soon as he had copied it; and that my name should not be mentioned; and, therefore, I do complain of double treachery in that paper. I will take care to know a man before I negotiate for him again; I add further, it was not justice to lord Sandwich, when I came to consider of the whole; that I would have had business out of the kingdom, sooner than I would have been here; and if lord Sandwich had talked unguardedly to me, or the lowest man in the kingdom, I would not permit it to be said, that he should be a sufferer by placing confidence in me.

What was this great secret you would have gone out of the kingdom to avoid?—I said, if lord Sandwich had talked unguardedly; if he had laid himself open to me; if he had, in that confidence, put me in possession of a secret; if I thought it a secret proper to be

press him to consult the rest of his counsel; and did you send to know whether Mr. Bearcroft, and Mr. Erskine, were in the way?—This remaining part was not read, but is a copy of the original. *Orig. Ed.*

concealed; not only in the case of the noble lord, but the lowest person in the kingdom.

What was there, in this negociation, that was at all secret, or could be kept secret?—In my apprehension nothing with regard to lord Sandwich, but with regard to myself, as the counsel that did negotiate, I abhor it to this moment.

Explain what relates to you as counsel in this business?—I could be better employed at this moment, rather than here; it is my duty to examine witnesses in some cases, and I wish never to be a witness, especially after the words, “I talk with you, because I consider you as a man of honour,” and I desire it may appear to mankind, that I do not collude, and that I do not negotiate with a man to betray him.

What is the secret in this negociation, that there is any thing wrong in betraying; that can hurt any body?—I beg it may not be thought too bold a declaration, if I had thought there had been any thing, I would not have been here, and because I thought there was nothing, therefore I am here.

What do you complain of?—The treachery of mentioning my name, and the writing that paper, which was as artfully calculated as could be, that nothing might come out. Mr. Butler, I said, would know what he is about and bring it out, if not, the cross-examination will, and it always was my opinion never to meddle with this part of the business.

What was the possible mischief or hurt to any person living, from this being made known?—I have very particular feelings, which I dare say your lordship, and every lord that hears me, will enter into the feelings a man may have in his own breast, which he cannot well analyze, when called upon to speak to disclose that which he learned in confidence.

I must beg to have an answer to that question, what there is so secret in this, that should hurt Mr. Murphy to disclose?—In my opinion, in such a situation as I am in, having talked for one with the other; the conversation is to the noble lord's honour, that is my sentiment about it.

There is one point I had forgot, which is, to ask you, whether in the course of this conversation, that you understood lord Sandwich's offer was to make a compensation to captain Baillie, or only to Mr. Devisme?—Mr. Baillie proposed, that it would be a sufficient compensation to him, if his son-in-law, Mr. Devisme, should be made a commissioner of the victualling, and he would then readily resign upon his half-pay; I believe, he did say Mr. Devisme and him would understand one another.

The question I asked you, was not what captain Baillie proposed, but whether lord Sandwich had proposed to give a compensation to captain Baillie himself, or had agreed to it?—My lord Sandwich certainly did say,

that that proposition relative to Mr. Devisme, he should have had no objection to, if it had been practicable, but it was impracticable; for on the Tuesday morning, he said he had seen capt. Kirke, that capt. Baillie was misinformed relative to him, he did not want Greenwich Hospital at all, therefore that would not do; that he knew Mr. Devisme, and should have had no objection to doing it; and the readiness with which he saw capt. Kirke, convinced me that it was so. Captain Baillie frequently told me, he believed the noble lord had not seen captain Kirke; but his brother, in my chambers, did once desire him to say that no more, because he knew, of his own knowledge, that lord Sandwich had seen captain Kirke.

The question I ask is, whether lord Sandwich did not say he would give a compensation to captain Baillie?—He did say it in the way I mention; I chuse to avoid my own paper, and not to give short and dry answers; lord Sandwich did say he would have carried that into execution if he could. The noble lord did say, if captain Baillie could show any practicable mode of making a provision for him; and I think he said perhaps I may see that myself sooner than him, and he was willing to do it.

Then did you understand in making a provision for him, that he meant through Mr. Devisme, or directly to captain Baillie?—In the way captain Baillie should chuse to be served, but desiring captain Baillie would always bear in mind, that he would not appoint him to a public office.

Did you understand that compensation to have been such, as with his half-pay, should amount to 600*l.* a year?—I understood so; I concluded it was meant so; I myself did understand and conceive so, though I do not know that there was any such distinct words.

I should be glad to know whether captain Baillie has called upon you since you have been summoned?—When I came off the circuit, which was about the 24th or 25th of March, he did call upon me; he told me I was come in time; I said I did not relish it at all; that I was in hopes it would have been all over while I was on the circuit, and I protested entirely against it, both in point of utility to him, and inconvenience to myself; he called upon me about a fortnight ago.

The Earl of *Chesterfield*. Did he never intimate a wish, that you should soften your evidence?—I believe nobody that knows me would mention that to me; he did not.

Whether captain Baillie ever expressed to you who the persons were that he alluded to, when he said, that though he could trust the noble lord, yet he could not trust the people about him? Did he name who those people were?—I do not recollect that I had any curiosity about knowing who they were; because I knew at that time who the people were that he was at variance with; I ima-

gined he meant all the people in the Hospital that complained of him.*

Do you know that these people were the particular advisers, or were much about the noble lord at the head of the Admiralty?—I had no more knowledge about the Hospital, or the government of it, or the power and authority the lords of the Admiralty have over it, than I have of the laws of Japan, till I had that brief.

Did he name any of them?—I cannot say whether he did at that time; I often heard him name among the people that applied to the King's-bench, among the people that complained to the Admiralty, among a variety of people that he was at variance with in the Hospital; I have often heard him name those he pointed at more than others.

Who were they?—I believe the rev. Mr. Cooke had a good deal of share in his resentment; and I believe Mr. Hicks, and Mr. Mylne, had a good deal of share in it. Their names do not occur to me now, but I believe there were few escaped.

Whether, when he expressed that diffidence of trusting to the noble lord from the people that were about him; or whether he did not say, that he could have depended upon the noble lord himself, if he had been the only person?—That he would have trusted to him if he had stood single and alone.

Did you hear him express any other warm words?—I did not mention them as an instance of warm words; but recollecting all of a sudden, that he did make use of that expression, and I thought it could not injure him to tell it. It was not produced as an instance of passion, or of his being violent or warm.

[Mr. Murphy withdrew.]

Friday, May 7, 1779.

Captain Baillie called in.

I beg captain Baillie will inform the committee of what he knows relative to a transaction between Mr. Butler, Mr. Murphy, and himself; to any offer made to him, or from him, relative to his quitting Greenwich Hospital?—I shall humbly hope for the indulgence of the House, to permit me to read what I have taken down upon that occasion; it cannot be expected of me, to follow two such eminent counsel as Mr. Butler and Mr. Murphy; I have taken down a simple account of facts, if your lordships will permit me to read it as evidence.

My lords, as the matter of the negotiation with my lord Sandwich concerning the resignation of my late office of lieutenant-governor, has been heard at your lordships' bar, with a variety of circumstances, the greater part of which have been represented materially to my disadvantage, I trust you will

permit me to point out whatever may be necessary to lay a true state of that transaction before your lordships. My lords, a great deal has been said, concerning the secrecy which ought to be preserved by men of honour in their negotiations, that all conversations about them are supposed to be confidential, and that the most profound secrecy is an implied stipulation; it appears to me, that a man who means to act fairly, has no secrets. I have in every stage of this matter declared, that I have none; and I well know, that I am struggling in a cause in which nothing but truth and justice can support me. When this negotiation was opened to me, a great deal was said about secrecy, in which I was willing to acquiesce, as long as I conceived myself to be fairly and honourably treated; because I understood it to be the particular request of lord Sandwich that it should be so; though, as his lordship declared, he meant to act in the most generous manner, I wished, for his sake, that secrecy had not been stipulated; but, my lords, when I found that the negotiation evaporated into words, and that all which remained, was little more than the most contemptuous indifference, the idea on which secrecy was stipulated was at an end; proposals were held out to me which ended in mockery and insult; and nothing could be more unreasonable, than to suppose, that I could be under an obligation to keep such treatment a secret at the request of those by whom I had been insulted.

My lords, that I was willing to change my station in Greenwich Hospital, for an adequate compensation, was so far from being a secret with respect to me, that I repeatedly pressed it to my lord Sandwich some years ago. It was my indispensable duty to protect the pensioners to the utmost of my power, and therefore it was impossible for me to acquiesce in the scenes of fraud and oppression with which I was surrounded; but I foresaw the dilemma into which I should be reduced; and though I could not neglect the duties of my office, whilst I continued lieutenant-governor of the Hospital, I wished to avoid that ruin which threatened me, if I took any effectual steps for redress. Your lordships have already heard a letter from lord Sandwich, dated the 6th of October, 1772, when this offer was first made to him, in which he expressed his surprize at my wishing to retire, and pays me very unreserved compliments on my conduct in the Hospital.

My lords, the same offer was again pressed on his lordship, when I laid the great complaints of the pensioners concerning their beer before him, in May, 1777; I then found that I had lost his lordship's good opinion, though it appeared to me, that I had persevered in the same line of conduct, which he before had complimented; I was told that I was troublesome, that I would not let business go on, and that the same thing would happen wherever I should be placed; a declaration

* No complaints were ever made against captain Baillie, only recriminations. *Orig. Ed.*

which surprised me greatly, as I have been a zealous and a faithful servant to his majesty near forty years, in various situations, without ever having had blame imputed to me before; and I could not conceive that his lordship meant to declare, that it was not in his power to place me in any situation under government, in which a man, who would not be a silent witness to fraud and oppression, could be employed; from this interview, my lords, which has left the strongest and most disagreeable impressions on my mind, I despaired of redress for the grievances of the pensioners, or relief for the mortifying insults I had met with, in every attempt to protect them; I was at length compelled to take the only step which remained within the line of my duty, that of an appeal to all the great and noble personages, who form the general court of commissioners and governors.

My lords, nothing could be farther from my wishes or expectations, than that the matter should have become public, or have ever assumed the appearance of disturbing government, especially in times so critical and dangerous as the present; but in all the subsequent stages of the business, I have been compelled to be a patient spectator of the steps which have been taken preparatory to my ruin; I have been brought before such a tribunal, in the late committee of directors, as I trust never did before, nor never will exist again in this country; a court, wherein a part of the persons accused sat as judges, and others of them appeared as evidence; the determination has been exactly such, as was the necessary consequence of a court so constituted, where all material evidence, except of the persons charged, has been rejected, facts of the most glaring notoriety declared not proved; I have been pronounced a false and malicious calumniator, and sentenced to lose my office, in the most ignominious manner for having dared to accuse.

I have been compelled to sustain a most harassing and expensive suit in the court of King's-bench, which was discharged with costs, as they are called, that is, with about one half of the expence actually incurred, and no kind of recompence for the fatigue and anxiety of mind occasioned thereby.

My lords, during the pendency of the prosecutions in the King's-bench, all my counsel, after they had read their briefs, told me, that after the great weight of uniform and respectable testimony, which was contained in more than thirty affidavits, they could have no doubt of the truth of the state of the Hospital, which I had laid before the general court; but that however just my cause might be, the number, the influence, and the perseverance of my prosecutors, would inevitably ruin me.

Mr. Bearcroft (my leading counsel) told me very kindly, that he would take an opportunity to speak to the Solicitor General, to see if the matter could be accommodated, if I had no objection; I told him that it was already

well known, that I wished to resign my appointment in the Hospital, whenever an adequate provision should be made for me in any other station, but that I had no kind of expectation that the matter would then be accommodated, as I well knew the malice of my enemies, and that as they had obtained a rule upon six different motions, in the court of King's bench, that nothing could stop them from trying the event of every one of them.

Mr. Bearcroft accordingly found his attempts to negotiate with Mr. Solicitor General fruitless, and nothing could have relieved me from those informations, but the clear justice of my cause, and the very able defence of my counsel; I have since found, however, that Mr. Murphy made my case the subject of very indiscriminate conversation, and so far as his good intentions were employed, I considered myself as obliged to him, as it was a proof of his zeal, and his opinion of the truth and justice of my cause; but I neither consented, desired, or encouraged him to enter into any negotiation whatever; but, my lords, when the business began to wear a different face, when all the motions for informations in the court of King's-bench had been discharged, when the great impression which the defence made on the whole court had been felt, when it was known that some of the first lawyers in the kingdom were of opinion I was entitled to a mandamus, the career of revenge was necessarily restrained; when it was known that notice had been given, that a general enquiry would be made in this House, into the abuses in the management of Greenwich Hospital, I then for the first time began to expect that a negotiation would be set on foot; it was impossible that so corrupt a scene, and the history of so many abuses, could willingly be exposed before this great tribunal, and subjected to that censure which might be dictated by the wisdom and integrity of your lordships; but I was so far from attempting to set such a negotiation on foot, that I very well knew, if a proposal came from me, the very measure itself would prevent it, and I do most solemnly declare, that I did not, directly or indirectly, commission or order Mr. Murphy to renew any of those applications which he had himself begun, and which I found he had made the topic of his frequent conversation; I was not however surprized, when Mr. Murphy informed me, that a Mr. Butler had entered into conversation with him upon the affairs of Greenwich Hospital, and I do solemnly declare, I understood from Mr. Murphy, that Mr. Butler's proposals came straight and direct from lord Sandwich; and I was the more confirmed in this belief, as I had, three or four days before, heard it rumoured in the Hospital, through channels which I knew to be authentic, that it was intended to remove captain Bailie, by giving him an equivalent in lieu; and however accidental the meeting at the coffee-house then might be on the part of Mr. Mur-

phy, it did not then appear to me to be so on the part of Mr. Butler; that Mr. Murphy had been my counsel, must have been a fact well known to Mr. Butler, though Mr. Butler's connections with lord Sandwich were unknown to Mr. Murphy, as he himself informed your lordships; but admitting that the meeting was perfectly accidental, it was I, and not lord Sandwich, that received information from it; I learned that lord Sandwich was now, for the first time, induced to give me a compensation; he was the only agitator in the matter; he sent for Mr. Murphy, but I made no application to Mr. Butler, under the circumstances in which the matter was stated to me; I had no kind of doubt but that it was a deliberative message, and that it was at length really intended to offer me an honourable and an adequate compensation in lieu of my office.

I therefore held myself bound by the original proposal to lord Sandwich, which I had made to his lordship long before the prosecution, in circumstances very different from the present; I had undergone a long train of harassing, expensive, and injurious treatment; I had resisted a very virulent legal attack, and my mind now glowed with hope, that the great, and almost the only object of my wishes on this side the grave, the reformation of the abuses in Greenwich Hospital, would at length be accomplished by the proposed enquiry at your lordships' bar; and that the great root of every other evil, the introduction of landmen, which had been in some measure sanctioned by the alterations in the charter, would be totally removed, and effectual precautions taken to shut out every possible sanction to the like abuses for the future; under these circumstances I listened with reluctance to the considerations of prudence which were suggested to me; the most prevailing of which were, that though my printed Case, and the subsequent enquiry, had convinced many people of the existence of the abuses, yet the pride of power was too great to yield immediately to those convictions; under those circumstances the negotiation was proceeded on. Mr. Murphy waited on lord Sandwich at his desire, without my knowledge, and the two memorandums which have been read to your lordships by Mr. Butler, were drawn up by my consent, but at their requisition. On this paper I beg leave to observe, that it was so far from being understood by any of the parties that captain Baillie was the first mover or a petitioner in this negotiation, that the paper which Mr. Butler called my ultimatum, drawn by himself, begins with the words, "Captain Baillie is willing to resign his office upon an equivalent compensation to be given beforehand." This is certainly not the language of solicitation; if my lord Sandwich meant to act with the fairness, openness, and delicacy of a superior mind on this occasion, it seems reasonable to expect that he would have felt that

whatever was proper to be done ought to be done immediately, and that he ought not to have claimed confidence under the circumstances of the negotiation.

I found it was expected that I should permit the report of the committee to be printed without reply or expostulation; that is, I was to permit myself to be proclaimed a liar, and a base, groundless calumniator, throughout the kingdom; such a proposal was the highest insult that could be offered to a man of honour, who felt the fullest conviction of the truth of all his complaints, and who had preserved through life a fair and unblemished reputation as the first and dearest object of his attention.

My lords, it is with great surprize that I have heard myself accused of treachery by Mr. Murphy; there is not a man in the world scorns so base and criminal a meanness more than I do; when it was found that the negotiation ended only in the most inadmissible and insulting proposals, Mr. Murphy did himself draw out an examination for Mr. Butler. The negotiation, in an early stage of the enquiry, had been stated in this House; the circumstances were denied by lord Sandwich; my character was at stake; and the rev. Mr. Cooke and Mr. Butler, connected as they are with lord Sandwich, were not witnesses to support me in the truth of my assertion; my brother might justly be supposed to be equally prejudiced in my favour. I conceive that under these circumstances I had a right to the testimony of Mr. Murphy; and I was equally surprized and alarmed to find that he felt the utmost reluctance at being examined; I did not wish him to entertain any scruples, or to affect any secrecy on my account; but I found his scruples and his delicacies arose on account of lord Sandwich; I had not been at all prepared for a delicacy of this kind, as the conversations which I had hitherto had with Mr. Murphy respecting similar transactions, had deeply impressed my mind with very different ideas from what Mr. Murphy was pleased to pronounce at your lordships' bar concerning the noble lord; but I find that his delicacies had arisen in the conference which he had held with his lordship, which conference appears to me to have detached him entirely from my interests.

My lords, in this situation, alarmed as I was for my own character, I was glad to find that I had accidentally preserved the paper of examination intended for Mr. Butler. Mr. Murphy has told your lordships that it was a paper artfully contrived to draw Mr. Butler into a state of the matter quite different from what it really was. My lords, I despise all such mean arts; and if I had understood it at the time, I would on no account have permitted it to have been done; and I most solemnly protest to your lordships, upon my oath, (as I now am) I understood the paper literally; and I was greatly surprized to hear Mr. Murphy acknowledge that he meant to treat a

brother of his own profession in a way which appears to me to be really treacherous, and in any other profession, would be held to be base and unwarrantable.

My lords, in this paper Mr. Murphy proposes that Mr. Butler's hand-writing shall be produced against him; I felt myself compelled to take the same advantage of Mr. Murphy, that he had himself proposed to take of Mr. Butler. Mr. Murphy's evidence and conduct drove me to the disagreeable necessity; and your lordships have seen that his mind is now more hostile to me than that of Mr. Butler, whose evidence was liberal, compared with Mr. Murphy's. My lords, I trust I shall stand fully justified in your lordships' opinion, when it is considered, that if it had not been in my power thus accidentally to compare the testimony of Mr. Murphy by this paper, I must have appeared to have advanced a most foul and improbable assertion, for which I should not have been able to have produced a shadow of proof; I should otherwise have had no support, than the conscientiousness of my own mind, that the whole was true.

My lords, no part of the evidence which has been given, at your lordships' bar, has surprized me so much as that part of Mr. Butler's, who has sworn, that all orders of men, in Greenwich Hospital, had complained of captain Baillie. My lords, if this be true, I am ready to admit, that all I have said about Greenwich Hospital is false, and I would gladly join issue upon this ground. I will tell your lordships who they are, viz. five sea officers, out of fourteen; three civil officers, that have been at sea; and a combination of landmen, consisting of eighteen or twenty persons, out of 2,300, or 2,400 souls. These, my lords, are the men; these are the combination alluded to by the noble lord, that have prevented and obstructed captain Baillie in his duty, and which was to be assigned, as a public reason, for his resignation. My lords, except these persons, and their immediate dependents, I trust that my being restored to the office would be heard with sincere joy by all those who are the real objects of the charity.

My lords, that ever I thought of resigning my office, was so far from proceeding from any dislike to the Hospital, that my real wish has always been, that I might live and die in peace there, and rest among the pensioners; I consider it as one family, the most venerable and respectable in the world; a family of brave old seamen, who are supported by their country, as a reward for their past services, at the head of which I generally presided; and I had no earthly wish equal to promoting their comfort and happiness; and no proposal, however advantageous, which could be made me, would give me equal satisfaction to being restored to them, without the apprehension of being obstructed in the performance of my duty.

My lords, I am also represented, by Mr.

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Butler, as a man of the most violent and ungovernable temper, without his having produced a single instance to support it; lord Sandwich himself has given repeated proofs, under his hand, to the direct contrary; and the two late governors have also approved my conduct in the Hospital, as appears by lord Sandwich's and their letters, in October, 1772, ready to be produced, as well as the strong words of my warrant by which I had the honour to be appointed by lord Sandwich. I have likewise the misfortune to be accused of ingratitude; am I, my lords, in honour or in conscience bound to see two thousand British seamen abused, in all their interests, by way of shewing my gratitude to a noble lord, after he had turned a deaf ear to my repeated remonstrances? Neither has my professional character, as an officer, escaped the censure of the noble lord, in the most public manner; and, I therefore hope, your lordships' goodness and indulgence will be pleased to permit me to produce a letter from the late secretary of the Admiralty, Mr. Cleveland, wherein it appears, that my character, as an officer, is unimpeached at the Admiralty*.

[Captain Baillie withdrew.]

Mr. Godby called in.

Whether you know what the contract price is, now given for shoes and stockings?—The contract price for shoes is 3s. 9d. and 3s. 9½d. for the extra shoes.

What has it been heretofore?—The present contract has been for two years, which are near expired; the contract before this was 3s. 7d. and 3s. 7½d.; the contractor tells me, he contracted six or eight years ago, and then it was 3s. 7d., 3s. 9d., and 4s. 9d.; the contract price for shoes, in common, is much about the same as the present; but that for the extra shoes, which are very few, 4s. 7d.

Has not the contract price been increased?—It is 3s. 9d. and 3s. 9½d. now.

What is the price of stockings?—The pensioners' blue hose, 18s. a dozen; boys' blue yarn, 10½d.; grey, 10d.; ditto worsted, 1s. 4d.

What has it been heretofore?—The present contract price is 18s.; the last was, I think, 19s. but I am not quite certain.

Before that what was it?—It varied very little, but I cannot say exactly what; it was 19s. 6d., or 20s.

In general, has the price been less than it was?—I think much about the same; the present contract price is 18s.; I think the last contract price was 19s.; I think it may have been 19s. 6d.; I think I remember its having been 20s*.

Does the money all go through your hands that pays the contractors for shoes and stock-

* He was not permitted to produce the letter. *Orig. Ed.* See this Letter, p. 14.

† Of these shoes and stockings, which are the worst that are ever made, the poor men have but three pairs in two years. *Orig. Ed.*

ings, as well as the meat?—It does not, nor for the meat neither; the bill is passed through my office, but not the money.*

The contract price has been always fluctuating, I suppose?—Always; sometimes more, I believe, and sometimes less.

Mention an instance where it has been less?—The stockings were 19s. last contract, which was two years ago.

But whether there is an instance less than the present time?—I believe it may be so, but don't recollect. [Mr. Godby withdrew.]

Mr. Ball called in.

Do you know what the present price of the contract for shoes is?—I believe 3s. 9d. and 3s. 9½d.; 3s. 9d. for the common, and 3s. 9½d. for the extra, which are very few; those are high heeled shoes.

What has been the price heretofore?—I believe 3s. 7½d., and 3s. 8½d., the contract prior to the last.

What was it before that?—I cannot recollect; but I believe about 3s. 9d., or thereabouts.

How high has it ever been, in your memory?—I do remember it 4s. for a common pair of shoes.

When did you remember that?—About 18 years ago; I was appointed by Mr. Bell, a former steward.

How long did that price last?—It was a standing contract for some years; of late they have contracted every two years.

How many years did that last?—Several years before I came into office.

How many years after?—I believe four or five years.

When was it altered?—That man who served it went to Quebec; the contract was put up, and the lowest proposal was received; and, from that time, it has been the constant practice to contract every two years, every general serving.

About what time did it happen that the price was lowered?—I believe ten or twelve years since.

What was the price two years ago?—3s. 7½d. and 3s. 8½d.†

What is the price of stockings now?—The present price, I think, is 19s. a dozen.

What did that use to be formerly?—I remember it at 18s. a dozen.

How long is that ago?—About six years.

How high do you ever remember it?—I don't remember it higher than 20s. a dozen.

Are the shoes and stockings the same quality?—They are received by the same pattern as formerly.

* It is notorious, that Mr. Godby, for those and other such purposes, receives 2,000*l.* regularly every month. *Orig. Ed.*

† When leather was cheap, the contract was at 4s. per pair; as it grew dearer, the price was lowered to 3s. 7d. per pair; since which the men's shoes have not lasted half the time they ought, that is three pair for two years. *Orig. Ed.*

And are full as good as ever?—They are received by the same pattern as formerly, and those stockings that don't appear equal to the pattern are rejected; and if any complaint is made of them, an application is made to the board, and the contractors are generally sent for to give their reasons.

I suppose the contract price varies according to the marketable price of the commodity?—Yes.

I suppose leather was dearer, when shoes were highest?—As leather is dearer or cheaper, so the contract varies; and the payment of the Hospital being so punctual, it induces contractors to accept it upon very low terms. [Mr. Ball withdrew.]

Philip Stephens, esq. called in.

Are not you secretary to the board of Admiralty?—I am.

Were you present at the board of Admiralty upon the 25th of December last, when captain Baillie was dismissed?—Yes, I was.

Whether captain Baillie had, previous to that dismissal, been summoned to appear before the board of Admiralty?—No; he was not.

Did the Admiralty communicate to captain Baillie any complaint against him for misbehaviour previous to his dismissal?—I do not recollect that they did.

The Earl of Sandwich. Are you a prize-agent?—No.

Are you positive you are not?—I am certain I am not. I was a prize-agent in the beginning of last war, and in the war preceding that; but as soon as I had the honour of being appointed one of the secretaries of the Admiralty, I declined all prize-agency.

And you have not been a prize-agent since you have been secretary to the Admiralty?—Excepting for a day or two; but I declined it as soon as I could write to my friends.

[Philip Stephens, esq. withdrew.]

Sir William James called in.

Whether you were a member of the committee to enquire into the complaints of captain Baillie relative to Greenwich Hospital?—I was named as one of the committee; I was not present at the time; as I had been pretty much engaged in other avocations, I should have begged to be excused, but not being there, certainly I did not make any objections, but attended as often as I could.

I beg you will inform the House how often you did attend the committee at Greenwich Hospital?—I think I was at three; the minutes will shew that.

Were you not present at the general court when that committee was appointed?—No; I was not.

I beg you would inform the committee whether captain Baillie did not, when you were present, several times offer to produce witnesses which were refused to be heard?—I don't know that that was the fact.

Do you not recollect any instances where the evidence offered to be produced by captain Baillie was refused?—I certainly do not; I recollect that there were altercations at the board, when I fancy Mr. Baillie might have introduced, or endeavoured to have introduced, matter extraneous to the point then under discussion, which gave a good deal of interruption to business, but I do not know that any evidence was refused.

Whether the evidence of the blind men were heard relative to that part of the business?—I think that was the last committee that I attended at. The charge respecting the inconvenience that they had laboured under was admitted or allowed to be a grievance, and that was understood by the committee to have been remedied; the fact was admitted.

Was any report made by the committee that that part of captain Baillie's complaint was well-founded?—Upon my word I have not seen the minutes of the committee since I attended at the board, they will speak for themselves.

Do you recollect whether that fact was admitted at the time by the committee?—It was not disputed, it was not entered into; it being understood that a rail* had been put up, and the grievance remedied, it was thought unnecessary to go farther into it; it being so understood, and having been so represented to the committee.

Do you recollect whether any minutes were taken by the committee that that fact was admitted; that that complaint had been grounded?—I really don't know; I presume the minutes will speak to that fact; the deputy secretary attended, and took minutes; I have not looked at them since.

Who was that deputy secretary?—Mr. Cooke, I think, was the person that took the minutes.

Has he any employment in Greenwich Hospital?—He acts as assistant secretary.

To whom?—To the board of directors.

Were not parts of captain Baillie's book complaints against the board of directors?—Certainly it was so understood.

Do you think that directors were proper to form a committee to enquire into their own conduct?—I believe they did not think it was a right thing for them to enquire, or to decide upon their own conduct, and therefore they did not enter into that part of captain Baillie's book, at least at any committee at which I attended.

* So ignorant are the directors of Greenwich Hospital, even in respect to the execution of their own orders, that upon the recommendation of Mr. Mynne, the clerk of the works, 1,200 yards of posts and rails were destroyed, (which had been, formerly, erected for the comfort and security of the lame and blind pensioners, when proper attention was paid to their infirmities) are by the committee converted into one single rail. *Orig. Ed.*

Were not all the members of that committee directors?—I believe they were.

Were there not very serious complaints against them in that book?—I think, without going into names, there was some kind of discrimination, there were some exceptions I think in the charges that were brought against the directors in the publication.

But I would ask you whether in general there were not several charges against the board of directors in general, as directors?—I have not read the book lately, it will speak for itself; certainly what appears in the publication every reader will give his own idea or interpretation to; that undoubtedly the directors did consider themselves as charged generally.

Do you think that men who think themselves charged generally, are proper judges to try the man who charges them, though it be not upon those charges that affect themselves?—I should be very glad to be excused answering any questions of opinion: it certainly is matter of opinion; I observed before, that as well as I recollect the charge, it does admit of discrimination; there are some persons marked as men (I think the expression is) of worth and honour; when the committee was named, captain Baillie had the privilege of excepting to any that he chose to except against, as I understood; and it may be presumed, that as he had mentioned the characters in a light of some discrimination, he might have chosen a proper committee out of those directors; or might have excepted to any that he thought improper: but that is certainly matter of opinion, upon which every noble lord in the House, or any gentleman, can judge as well as I can. I shall be very glad to speak to all the facts I know; and I am sure I shall do it in the most impartial manner, without the least kind of reserve.

I am very sensible my question to sir William James is entirely matter of opinion; and I asked it of sir William James, because I have a very great respect for his opinion; he will answer it, or not, as he thinks proper; that is in his own breast. My question is, whether the directors, thinking themselves, in general, aggrieved, were impartial judges to try the conduct of that man whom, they supposed, had aggrieved them, though it was not in the points upon which he had attacked them?—That part of the charge which respected themselves, I have observed already, that they did not think it decent to go into.

Am I to understand you, that you wish to decline giving your opinion, whether they were proper judges of entering into the other parts of the business?—I do not know any reason why they were not proper and competent to decide upon any other parts of the charge.

Do you know whether Mr. Cooke, who took the minutes, has not some other employment under some other person in the Hospital?—Upon my word, I do not; I know

Mr. Cooke in no other light whatever, but as a person who sometimes assists there as deputy secretary.

Do you recollect whether the evidence of Mr. Charles Lefevre was heard?—Not while I was at any committee; I don't recollect such a name as an evidence.

Do you recollect whether captain Baillie did not propose to produce that witness?—I do not.

Did you attend the last day?—I believe I did.

Do you recollect the manner in which the committee was broke up?—For my own part, I did not conclude the committee as broke up; there had been some altercation at the board, between a gentleman that assisted Mr. Baillie, and Mr. Morgan, I think, respecting the mode of proceeding, or respecting the introduction of matter; and, I think, the chairman of the committee conceived, that it gave very great interruption to business; there was a very good disposition in the committee to hear every thing, and to decide impartially; but, he conceived, that gave so much interruption, that I fancy he might make use of an expression, that he did not know any business there was for lawyers; for, I believe, he conceived the gentleman that assisted Mr. Baillie to be of that profession, from his great abilities, and the great assistance he appeared to give the Case of captain Baillie; I believe he made use of the expression, that he did not know what they did there. Upon Mr. Cowley's withdrawing, I think captain Baillie did the same; but that did not break up the committee, we continued doing business after that.

I beg you will acquaint the committee, whether captain Baillie was not ordered to withdraw, at the same time?—I do not recollect that, indeed,

I think you say, they continued to do business after captain Baillie was retired?—Yes.

I beg to know what that business was?—I think a great number of the gentlemen, that constitute the military council of the Hospital, were called in, and examined with respect to a complaint of some veal, said to have been improper, I think, for the infirmary; Dr. Hosack, the physician of the Hospital, and they, were interrogated with respect to other matters, to know whether any grievances existed, or they had any complaints to make; and, I think, it ended generally in their having nothing to complain of; no complaints were made.

Whether any other matters of enquiry were then gone into?—As far as my recollection serves me, that was the last transaction of that committee, which was the last that I attended at.

Whether I am to understand, that this last transaction was in the absence of captain Baillie, and of the gentleman who attended him?—I believe they were out of the room.

Was any report made of that transaction?

—I fancy that must stand upon the minutes; I take it for granted.

I will ask sir William James, (but this again is matter of opinion, which he will answer or not, as he thinks proper) whether he thinks it very justifiable, in that committee, to have examined into a matter complained of in captain Baillie's book, when he was absent, and his assistant; and to have reported upon it, without having heard him?—I think the gentlemen that I have mentioned before, consisted of eight or ten in number; and an opportunity was given to them, individually, to mention or prefer any complaint they had to make; they were asked if they had any.

What opportunity had captain Baillie of proving his complaint respecting the veal, if he was out of the room while it was examined?—I have already said that I do not recollect, nor do I believe, that captain Baillie was desired to withdraw from the committee.

Do you recollect the behaviour of Mr. Barker upon that occasion?—He was the chairman of the committee at that time.

Do you recollect his behaviour?—I do not recollect any thing particular in his behaviour; he appeared to be anxious and solicitous to get through the business.

Did you think his behaviour cool?—That is matter of opinion entirely; I saw nothing in Mr. Barker's behaviour, but what indicated a great desire to investigate truth, and to get rid of the business; for it was not a business that was a very agreeable one; it took up a great deal of time, at best; and was attended with very disagreeable circumstances; hearing altercations and disputes.

Mr. Barker was desirous of getting rid of the business, as you have expressed yourself; but do not you think he was desirous of getting rid of it rather precipitately? Am I to understand you then, to give it as your opinion to this committee, that Mr. Barker's behaviour, upon that occasion, was moderate, proper, and cool?—I wish the noble duke would not urge a matter of opinion. I saw nothing but what tended to a desire to carry on the business with a proper attention to facts and dispatch.

Do you recollect that you proposed that the men who happened to be on guard might be called, as a fair and impartial manner of taking the sense of many persons upon the several grievances and abuses charged in captain Baillie's printed Case?—At one of the committees at which I attended, a particular complaint, respecting the linen, was taken into consideration; the washing, I think, and the size of the sheets, were subjects of enquiry. I think I do recollect proposing, as I considered the object of the committee to be strictly to investigate the truth, and to remedy any real existing grievances, I did propose that any indifferent persons might be called in; but some shirts having been exhibited in the committee, which, at once, ascertained the

nature of their being washed, and the sizes, I believe the committee were of opinion they were very competent to decide upon that, upon their own observation. I examined a shirt myself; I am not one of the largest nor the smallest of men; the shirt which I saw, appeared to be a middling size; it cannot be presumed that all the men in the Hospital are of one size; and, therefore, without any inconveniences, there may be some differences in the sizes of the shirts; the shirts that I saw did not appear to me to be so small as to be really deserving of complaint. The washing of them was tolerable; certainly, not very fine; but it was understood, that whenever a complaint of washing was made, that the washerman, who contracts always, took the linen back again, and rewashed it, without any charge to the Hospital. Upon the subject of the linen, also, I wished to be satisfied myself, and I called for the books of the Hospital, in which I found, as it ought to be, indeed, a charge made against the steward, for all the linen received into the Hospital, of which he was discharged, by producing a certain number of shirts, and a certain number of sheets, and charged always with the residue, if there was any to begin another account; the books always appeared exceedingly regular and well kept.

I beg you will acquaint the committee, whether your proposal of examining the men upon guard, as a fair way of taking the first men that came, was carried into execution?—I believe I have explained myself upon that head before; I do not recollect that I said upon guard; but I think, at the time when the matter was discussing, I saw two or three pensioners walking past the window; I said, those were as proper as any other, you may take in those, or any other men to ascertain the fact. The answer was, the linen is here, upon which we could as well judge, as if a hundred evidences were examined upon it; my proposition, if it deserved the name of a proposition, was not opposed upon any other principle, than that the shirts being there, the committee thought themselves competent to judge upon the complaint.

I beg you will recollect, whether captain Baillie joined in this proposal or not?—I believe he did acquiesce in it.

I beg to ask you, whether you did not look upon that as a proof, that captain Baillie was willing to prove his charge by fair and impartial enquiry?—I know nothing that was done upon it, that precluded him from that opportunity.

Do not you recollect that the committee would not come into that proposal?—I have already given an answer to that; I have already stated the circumstance as it passed exactly.

This is a matter of fact, I beg you will be as good as to be particular. Did you mean to say, that the committee did not object to the calling in of those persons?—There was

no question agitated, nor no sense of the committee taken upon it. Gentlemen mentioned their different opinions; and I have already stated, that it was considered as unnecessary, the linen being in the room; but the linen being there, I presume, it was considered as the best evidence or testimony of the fact that could be adduced; I did not hear it objected to upon any other ground than that.

Am I to understand that it was objected to?—It certainly was not complied with; and indeed, in the manner that I have had the honour to state, I mentioned it as an idea, but did not press it.

But did not captain Baillie press it?—I think he mentioned it as a proper measure.

I think you have said, you do not recollect whe it was that did produce the shirt that was examined?—I do not; there was a large basket of linen, as well as I recollect.

Can you take upon yourself to say, that that basket was not produced by Mr. Godby, the steward?—I really do not know how it came into the room.

Can you take upon yourself to say, that captain Baillie did not offer to produce other shirts that were deficient?—Not that I recollect.

I beg you will inform the committee what your opinion has been of captain Baillie's conduct, in detecting the frauds of the butchers, and carrying on the prosecutions against them?—I have always considered it in a very meritorious light.

I beg to know what your opinion is of captain Baillie's conduct, in general, respecting the pensioners?—I never heard any thing to the prejudice of captain Baillie in the execution of his office as lieutenant-governor.

You have said you did not apprehend the committee was concluded at the time it was; I desire to know your reason for not thinking it concluded?—I believe it was not concluded; I think there was another committee held afterwards at one of the meetings in London, but I am not sure.

Was the seventh day of the committee's meeting the last time that you was there?—It was the seventh day.

I have not heard before of there being a sitting any where after this day? Do you know of there being any other sitting after the seventh day?—Not at the Hospital, I believe not; but there was a committee after that day; I think at Sakers-hall, in town.

Were you there?—I believe I was there at the first of it; what was done in it I really don't know.

Was captain Baillie at the meeting of the committee on that eighth day?—I cannot say; I staid but a very little time, if I was there myself; I think I was there for a very little while, but being engaged otherwise, I could not stay.

Whether you ever saw the report of the committee?—I heard the report read.

Whether that report mentions any proceed-

ings on this eighth day?—I cannot charge my memory; it is some time since I heard it read. [Sir William James withdrew.]

Captain Baillie called in again.

Whether you were present at the eighth meeting of the committee at Salters'-hall?—I was not.

Were you summoned to that meeting?—I was not summoned; I waited upon the governor, sir Charles Hardy, to know the reason why I was not summoned upon that business; he told me he disapproved very much, that every other director of the Hospital should be particularly summoned, and I have no summons. Mr. Wells, one of the directors of the Hospital, and one of the committee, told me, in passing by, in his carriage, after the committee broke up, on the seventh day, that there would be no more meetings of the committee at the Hospital, but that they should have another meeting at Salters'-hall, that they should not want me there.

Whether the seventh meeting of the committee, when the men's linen was produced, was the linen that was examined, that which you produced, or that which Mr. Godby produced?—I had a large flasket full of men's shirts and sheets, in the committee room, some new, some old, that were not examined; I could not prevail upon the committee to suffer them to be examined. I had another flasket full of shoes and stockings that were complained of; they were not examined; some few Mr. Godby thought fit to produce, were measured by himself, and it did not appear to me that even those sheets were near the length allowed by the establishment.

Did you acquiesce in the proposal made by sir William James, to take the first men that passed by?—Sir William James very candidly proposed, to call in any of the pensioners, and to take their sense, that might be near the council-room; I acquiesced in that. The reverend Mr. Cooke said, there were a number of people surrounding the doors, whom he said, he believed, had been selected and placed there for the purpose by captain Baillie. I said to that, if the committee would send to the guard, they might take the sense of the men promiscuously, or they might go into the wards of the Hospital, and see the sheets upon the men's beds, and the shirts for the next day; that was objected to by Mr. Cooke and the rest of the directors; sir William James, I thought at the time, did appear to acquiesce to it, he said nothing.

Was the reverend Mr. Cooke one of the committee?—No, he was not.

Was he present in the room all the time?—He was generally present; he walked in and out when he pleased; he was there the greatest part of the time.

Did he give his opinion upon any transactions that passed?—Perpetually; the moment that Mr. Lefevre came in, he said he objected to his evidence, and Mr. Barker took his ad-

vice; and I beg leave to say, his father's evidence was treated in the same manner.

[Captain Baillie withdrew.]

Monday, May 10, 1779.

Sir Merrick Burrell called in.

Whether you were a member of the committee that sat at Greenwich Hospital last summer?—At what meeting does your grace mean; I was at one meeting only, as I recollect.

My question was, whether you were a member of that committee?—I rather believe I was, but I protest I cannot absolutely say.

I beg to know whether you did not attend?—Once.

Whether you recollect, whether the evidence which lieutenant-governor Baillie called, was heard without hesitation or objection?—Upon what occasion?

The day when you were there?—I never was there but one day; that day was looking over the linen; there was I, and one other director there.

Whether you recollect, whether you did not yourself interfere once to desire, that captain Baillie's evidence might be heard?—I verily believe, if I saw any thing that I thought was rather oppressive, I should most certainly mention it; and I rather apprehend I said, let that be looked more into, or something of that sort.

Do you recollect, whether captain Allwright's evidence upon the charges concerning the linen was objected to?—My memory don't serve me in that affair.

You will endeavour to recollect, whether you did not yourself particularly desire, that captain Allwright's evidence might be heard?—I dare say I did; if I saw it right, and fit that his evidence should be given over again, I dare say I did.

It was not to be given over again that I ask, but whether you do not recollect that captain Allwright's evidence was refused to be heard concerning the linen, and that you interfered, and desired that it might be heard?—I dare say I did; I do not recollect any thing of it; but if it was a reasonable thing, I am sure I did.

I beg you will recollect, whether that fact is so; whether captain Allwright's evidence was refused?—I can say no more to it; it is a great many months ago.

Whether it appeared to you, that captain Baillie produced strong evidence in support of his charge concerning the linen, or not?—Upon my word, the evidence differed so much that day, and gave their reasons why the linen was shorter, that I really did not know how to determine upon it.

Did it then appear to you, that it was doubtful, whether captain Baillie had made out his charge or not?—There were a parcel of people there; the women that washed the

linen contradicted one another in so extraordinary a manner, that I could hardly form a judgment.

Whether the result of that examination was, that your mind was left in doubt, whether the charge was proved or not?—It was so.

Do you then think it was right in that committee to say that captain Baillie had not made good his charge?—I must answer, that in what I have said before, the witnesses were diametrically contrary to one another, that I really gave credit to neither of them.

I think you have said, that your mind was left in doubt, whether the charge was proved or not?—I think that was the case.

Then, whether you thought the committee ought to have reported that the charge was groundless?—There was but one of us, I and another director; I believe that the other director might rather think it stronger than I did; I do not know that he did.

Who was that other director?—It was Mr. Cust.

Do you recollect; whether there were any minutes taken of that day's proceeding?—Upon my word I do not recollect whether there was or was not.

Can you say whether any minutes were read to you for your approbation?—I protest I cannot give an answer to it.

Did you ever give your consent, to say the charge of the linen was not founded?—I do not recollect that ever I did; I believe I did not.

Did you observe any thing improper in the behaviour of captain Baillie, or of Mr. Cowley, who assisted him?—I did not.

Whether you at any time desired that Mr. Cowley might be heard in answer to Mr. Morgan?—I do not remember a word of any thing about it.

Do you recollect the clerk of the works, Mr. Mylne, attending there that day?—I am persuaded he was not there that day.

Do you recollect any person using any bad language towards the lieutenant-governor?—Upon my word I cannot say that I do; there was nothing improper that I heard, either on one side or the other.

Do you not recollect any body's calling the lieutenant-governor a blackguard?—I think I could not forget that; I don't remember a single word of it, upon my honour.

What was the day that you did attend?—Upon my word I do not recollect.

What was the reason you did not attend afterwards?—I was after that chiefly in the country.

Had you no other reason for not attending the committee?—I am a very old director there, and latterly I have very seldom attended at all. I can excuse myself for it; because when we attend we are paid, and when we don't, we have nothing for it; and I don't believe I have attended above six or seven times in the year.

Were you perfectly satisfied with the me-

thod of conducting that enquiry?—So far I was satisfied with it; because Mr. Baillie declared, that he had no manner of objection to any thing that the directors had done, or to that effect.

I beg you will explain that, for I do not quite understand it?—When we had the first meeting there, it was left to the directors to settle what complaints he had made; he then declared that he had nothing to say against the directors; upon which I declared then, I have nothing more to do with it; I will not trouble my head any more about it, nor I never did.

Did you attend there as a director, to defend yourself against any charge, or as a member of the committee appointed by the general court to enquire into the charges?—I never was but once at the committee, when we looked over the linen, and another time, when the lieutenant-governor made the charge.

What other time do you mean by that?—When we looked over the linen; it is very clear we were once at my lord Sandwich's, and there his book was read; and, upon my word, when I came to hear the book, it was so extraordinary a book, that I thought it hardly deserved almost a consideration; I must carry it so far as, that I pitied the poor man.

Was that time you attended at my lord Sandwich's, previous or subsequent to the committee's meeting?—The committee that I went with; Mr. Cust was afterwards; Mr. Cust was my neighbour; he said there was a committee, and desired me to go; I said, I would go once with him, but did not know what to make of this affair.

I beg you will inform the committee, whether you attended that committee as a director, or as a member of the committee?—As a director, I never looked upon myself to trouble my head about the committee.

Whether you afterwards attended at the general court that was held at the Admiralty in August?—No.

Whether you had any reason for not attending?—None upon earth; I certainly should have attended if I had thought it imported any thing.

Are you apprized of what was done at that general court?—Indeed I was not, I was out of town many months, and had heard nothing of it till I came to town.

Do you recollect now what was done at the general court?—Upon my word I don't know any thing of it.

If you had attended at that general court, did you see reason enough by your attendance at the committee, to have voted for the suspension or removal of captain Baillie?—As I was not there, I cannot form a judgment of what should have happened, as I did not hear what passed.

Did there appear sufficient ground to you, from what you saw at the committee, to think that captain Baillie ought to have been re-

moved?—As I said before, I pitied captain Baillie; I thought him an improper man to have been there.

Whether there appeared any thing at that meeting of the committee at which you assisted, in captain Baillie, that made him deserving to be removed from his office?—What passed there, I did not see any thing, I cannot almost give an answer to that; the man seemed so extraordinary a man; there were many things in the book which I believed at the time, I find are not so particularly, which we had nothing at all to do with; there are abundance of people that were there; there was a protest, that there were a vast number of landmen; upon being better informed, I find there are a very few.

Do you recollect how many landmen there are?—I have heard but very few; there are the two clergymen, which, in my humble opinion, ought to be seamen, and there are two or three more I have been informed; I had an opinion from Mr. Baillie and his friends, that there were a vast number there; I found it the contrary afterwards upon examination; when I say his friends, I mean the people that lived in friendship with him.

Do you recollect that captain Baillie in his book, has complained of there being more landmen than there really is?—I cannot give an answer to that, I can give an answer so far, that I always did understand, that the great force was upon landmen, that were put in improperly, which certainly is improper; but when I came to be informed, I find there is not that quantity of landmen put in that I expected.

Were you desired to sign the report of the committee?—I should think not; I was not there, and so I could not be desired to sign it.

Do you recollect the examination of John Glass, and boatswain Gough?—They were never examined before me as I can recollect.

Don't you recollect boatswain Gough being turned out of the room?—Upon my word I do not. Was it at Greenwich?

It is of Greenwich I am enquiring, it would not be proper for me to say it was, I am asking you the question?—I do not recollect.

Do you recollect any warm words passing between Mr. Morgan and lieutenant Gordon?—Indeed I do not; many of those things happened when I was not there, for I had been but at two or three meetings; I might have been there, but I do not recollect it, I very seldom attended.

Do you recollect any reason given by captain Maplesden why the linen was badly washed?—Indeed I do not; in short the greatest part of that meeting was a squabble between the washerwomen and both the parties; they contradicted one another in the strongest terms that could possibly be.

Do you recollect any reason given by captain Maplesden, why the shoes were worn out by the men, particularly by their working on

copperas grounds?—Upon my word I never heard one single word of the shoes.

You have said, you were at one meeting at lord Sandwich's, I beg you to recollect, whether you are sure it was at lord Sandwich's house, or whether it was at the board at the Admiralty?—I never was at the board of Admiralty in my life; it was in a large room, my lord Sandwich was there; if his lordship will be so good as let us know where it was.

The Earl of Sandwich. Was it not in the same place where I saw you, where the general court always meets?—A. I never was at the general court in my life.

Not at the general court of the governors of Greenwich Hospital?—I protest I cannot take upon me to say what room it was; I think it can be of no great consequence what room we were in.

I think you said you pitied captain Baillie?—I did.

What occasioned your having pity for capt. Baillie?—When I heard the book read, there were many things in it, that afterwards appeared to me not to be facts.

Whether you know of any case whatever, in which captain Baillie misbehaved as deputy governor of Greenwich Hospital?—I never heard any thing against that gentleman's character in my whole life.

You have said that there are in captain Baillie's book some things, that afterwards appeared to you not to be fact; did they appear so from information, or from your own knowledge?—It was rather, when I talked to other people who knew it; it was their opinion and mine too, that there were many things exaggerated.

It is a very serious charge against captain Baillie, that he had advanced things that were not fact; do you say from your own knowledge that it was so, or from conversation with other people?—I believe it might be from conversation with other people.

Whether there is any one fact stated in his book, that you know not to be true?—I cannot lay my finger upon any one fact, but there are many things that appear to me to be very much exaggerated.

[Sir Merrick Burrell withdrew.]

Captain Allwright called in.

Whether you know when the posts and rails round the Hospital were taken down, of which the blind men complained?—They were taken down since the present clerk of the works has been appointed.

How many years ago?—I believe it was within these three years; I cannot speak positively as to the time.

Was it before captain Baillie's Case was heard?—Yes.

I beg you will say whether, since that time, they have been put up again?—I know of none put up.

Are they put up to this day?—I know of none.

Whether you know, in general, that capt. Baillie's conduct towards the pensioners has been meritorious or otherwise?—I have always entertained the highest opinion of him, as lieutenant-governor of the Hospital, and as captain of the Hospital before.

Has there been any merit in captain Baillie, relative to the men's broth?—Certainly.

What was the state of that?—There was a great quantity made, more than necessary, for the pensioners, from the pensioners' meat, and the broth was frequently taken away; there was broth, as it appeared upon an enquiry at the council, overplus, that was sent to a man in some part of the town; and many people fetched broth that had no right, that boiled no meat in the copper.

And was that remedied, owing to any pains captain Baillie took about it?—Entirely; I have stated some complaints to captain Baillie, that broth had been pillaged, and more than once.

Have any attempts been made since that was abolished to renew that practice?—There have been some people fetched broth away that I have taken notice of; and, indeed, represented it to council, to desire that the cook, and the people in the kitchen, might be enjoined to attend to the orders of the council.

Whom were these attempts by?—By a man particularly, that I saw, a labourer in the Hospital, under the directions of the clerk of the works.

Have you any reason to think that it was with his privity or knowledge?—I cannot answer that question.

Has captain Baillie had any merit in the Hospital, with respect to the barber and the shaving of the men?—Without a doubt, the barber used to shave the people but once a week; it was represented to the council, that the pensioners could not go decently to chapel of a Sunday, if they were not shaved oftener than once a week; the emoluments of the barber appeared to be very great; and it was thought by the council* necessary to shave them oftener; the deputy barber did exact a halfpenny a man from the pensioners who shaved oftener; and, by a regulation that was made in the council, advised by the lieutenant-governor, a regulation for their being shaved twice a week, and the barber made a greater allowance to his deputy on that account.

And are they now shaved twice a week gratis?—If they go in the time of shaving, I believe, they pay nothing.

And is that alteration in shaving owing to

* The barber, by the establishment, is allowed an halfpenny per man, per week, for shaving 2,200 pensioners, amounting to above 238*l.* per annum; and being above doing any duty himself, his deputy exacted another halfpenny per week, from the pensioners, till capt. Baillie caused that custom to be abolished. *Orig. Ed.*

captain Baillie's having stirred in the business?—I believe it is.

Has captain Baillie any merit, in respect to having convicted the butcher's servant?—Yes; he was exceedingly active in that matter.

Has captain Baillie always behaved properly in the Hospital towards the men?—I think so.

Has he been sober?—I think so, very much.

Diligent?—Diligent, I think, undoubtedly.

Where did the fire begin in the Hospital?—Somewhere near the tailors' loft, near a stack of chimnies, between that and the Duke of York, and King's ward, somewhere that way, but the exact part I cannot take upon me to say.

Under whose care is the tailors' shop?—I should suppose it is under the direction of the civil people, the steward, and those people.

Was any council of the house called upon that occasion, to enquire into the cause of that misfortune?—I know of none by the council; a magistrate was down; if there was any by the council, I was not present.

Have you been in Greenwich Hospital the whole time that governor Baillie has been lieutenant-governor?—Yes; the whole time he has been lieutenant-governor.

Whether you know any one instance of captain Baillie's misbehaviour, as deputy governor?—In my own opinion, I know of none; it may be matter of opinion; respecting the case of the Hospital, I say nothing to that; but, in any thing within my own knowledge, I say not. [Captain Allwright withdrew.]

Mr. Edward Borley called in.

[Remainder of this day's interrogatories, by *Earl Ferrers.*]

Pray what is your office in Greenwich Hospital?—I am clerk to the treasurer of Greenwich Hospital.

Pray who is treasurer?—Alexander Hood, esq.

He is captain of a man of war, I understand?—Captain of a man of war.

Is he upon full, or half-pay?—I really do not know.

What emolument occurs to the treasurer of Greenwich Hospital?—The treasurer of Greenwich Hospital's emoluments are 200*l.* a year.

What other emoluments has he besides the 200*l.* a year salary?—Apartments in the house, and allowance of sundry necessities; such as coals, candles, and other kinds of necessities.

Then I apprehend you are appointed to do the business in this Hospital, as clerk to capt. Hood?—The treasurer, captain Hood, has appointed me, by power of attorney, to receive and collect all the monies, and pay all the monies in virtue of his office, as treasurer of the Hospital.

What are you allowed for so doing?—My salary, as treasurer's clerk, is 50*l.* per annum,

and I have apartments allowed me in the Hospital to live in.

Who is the steward of Greenwich Hospital?
—Mr. John Godby is steward of the Hospital.

And what money do you pay Mr. Godby, the steward of the Hospital; by the year, or monthly?—I cannot recollect the exact sum that I pay him; there is a book made out, quarterly, of the salary for all the officers in the Hospital, and that book I make out at the steward's office; it goes to the clerk of the cheque's office, there it is examined; from thence it is sent to the treasurer, and he pays by that book quarterly.

And that you pay to Mr. Godby quarterly?
—Mr. Godby's salary for himself and clerks I pay quarterly.

How much is that?—I cannot say exactly the sum, but it is an established salary for himself and clerks.

What does the Derwentwater estate bring into Greenwich Hospital?—I have brought some papers to refresh my memory, I cannot answer it without referring to them; if your lordships will please to give me leave (refers to his papers). The remittances from the Derwentwater estate are made by bills that the receivers send up to the treasurer, from time to time, upon account of these bills, when the monies are received for them are brought to an account and carried in the treasurer's account under the head of the Derwentwater estate; the sums received by the treasurer of Greenwich Hospital is the neat monies that is received, the treasurer knows nothing more of the Derwentwater estate than the neat sums remitted to him and brought to account; the annual sums received for several years past I have here.

What were they in the last year?—In the year 1778 ending the 31st of December, the Derwentwater estate remitted to the treasurer of Greenwich Hospital 15,000*l*.

Is that all?—That year.

For the whole year the two half years' rents of Lady-day and Michaelmas made 15,000*l*. only?—The remittances are from the 1st of January to the 31st of December, during that time there are bills remitted to the treasurer of Greenwich Hospital to the amount of 15,000*l*.*

And no more?—Not in 1778.

Are there no benefits from the lead mines on that estate?—The treasurer's office knows nothing of that.

You have in your account, I suppose, an account of every thing that is brought into the account of Greenwich Hospital besides that of the Derwentwater estate, have you not?—Of the sums received upon the different heads.

I should be glad to know it upon the different heads?—There are a great number of heads.

You need only mention the gross sums, and what they are particularly for?—The neat amount of cash received by the treasurer of Greenwich Hospital for the year 1778, 61,124*l*. 6*s*. 3½*d*.

What is that the produce of besides that of the Derwentwater estate?—It is the produce of various heads of the revenues of the Hospital, the principal ones is money arising from merchant seamen's sixpences; there are sums received on account of naval seamen's sixpences; on the Derwentwater estate; there are sums received the produce of the Northern and Southern Foreland lights; there is the interest of money in the stocks; there was in the year 1778, for merchants seamen's sixpences received 10,989*l*. 17*s*. 7½*d*.; upon account of naval seamen's sixpences, 19,000*l*.; the Derwentwater estate, 15,000*l*.; the produce of the North and South Foreland lights, 3,103*l*. 18*s*. 3*d*.; interest of money in the funds, 7,828*l*. 3*s*.; a parliamentary grant, 4,000*l*.; officers' half-pay that is received from the treasurer of the navy, appropriated to the use of Greenwich Hospital, 577*l*. 16*s*. 3*d*.; upon account of forfeited shares of prize money, 293*l*. 15*s*. 10*d*.; sundry rents of houses belonging to the Hospital, of which the rents are collected, 109*l*. 14*s*. 6*d*.

That is a small sum?—The Hospital have bought houses and lands contiguous to it; in order to enlarge it, formerly, and they have appropriated some parts, but not the whole, and those lands that have not been built upon for the use of the Hospital remain in private houses and are let to tenants, some two or three odd houses that are of small value, the whole rent collected in 1778, amounted to 109*l*. 14*s*. 6*d*.

Is that including what is in Greenwich and in London, because I apprehend Greenwich Hospital has houses in London as well as at Greenwich?—It is those in London and those about Greenwich; there is one article more, a legacy left to the Hospital of 100*l*. which I received, that is the whole received by the treasurer in 1778.

Do you know what the Derwentwater estate brings in annually?—I can acquaint your lordships with the neat sums received; there are different sums annually received; I have collected them from 1771 to 1777, and I have formed a medium for these seven years; in 1771, 20,000*l*. and the medium of the whole for these seven years, from 1771, to 1777, is 16,528*l*. 11*s*. 5*d*.

Then the Derwentwater estate, instead of being better since 1771, is infinitely worse by this account?—In the year 1771, 20,000*l*. 1772, 17,500*l*. 1773, 21,500*l*. 1774, 14,500*l*. 1775, 21,000*l*. 1776, 15,300*l*. 1777, 15,900*l*. 1778, 15,000*l*. these are the neat sums received by the treasurer in those respective years.

* There are large deductions for coals, &c. supplied to the Hospital. *Orig. Ed.*

* Lord Sandwich in his speech, took great merit to himself, in the increase of the revenues of the Hospital. *Orig. Ed.*

What reason do you give for the Derwentwater estate falling so much lower in that year and in the year 1774?—It is not possible for me to give an answer to that.

There have been no new leases, can you give an account of any new leases?—The whole account of the Derwentwater estate is settled at certain periods, the receivers of the estate send up their accounts debtor and creditor to the board of directors, Mr. Ibbetson, the secretary to the board of directors, has those accounts; Mr. Maule, the clerk of the cheque, has likewise the counterparts of those accounts, and they are settled and audited by the board of directors, from time to time, but the treasurer knows nothing but the neat bills remitted from time to time by the agents.

The receivers of these rents, I understand are not in town, but I think you say Mr. Ibbetson can give as full an account as any of them?—The whole accounts of the receivers of the Derwentwater estate are sent up among the other accounts; Mr. Ibbetson I suppose has those accounts, the clerk of the cheque, Mr. Maule, his office is to have counterparts of all the office business entirely, and for any further particulars reference must be had to those officers.

Is not there a rectory upon the Derwentwater estate?—I have been a very little time in Greenwich Hospital; I may have heard there is such a thing, but I am much unacquainted with the Derwentwater estate in every shape.

You do not pay Mr. Godby any money more than what you have acquainted us of, do you, upon any occasions?—Mr. Godby has the payment of a great number of articles as steward of the Hospital, for which he applies to the board of directors, from time to time, to have money imprest to him, in order to carry on the current payments as steward of the Hospital; the treasurer receives directions from the board to let him have so much money from time to time, and he accounts every six or twelve months, whenever the board call for it, for those sums so imprest.

You have been in this office a twelvemonth I apprehend?—I have been in this office three years.

Give me the particulars from January, 1778, to January, 1779, of what you paid Mr. Godby, with the dates.—It will be a work of considerable time to collect them from a book I have.

If you can give us the sums as you paid them in the gross it will do as well.—The amount of the household accounts for the year 1778, I can inform your lordships, which accounts he has the money imprest to him, and settles it from year to year.

Inform the committee of that then.—The amount of the household accounts for 1778 is 50,591*l.* 7*s.* 5*d.* [Mr. Ed. Boxley withdrew.]

Mr. Ibbetson called in.

What has the Derwentwater estate brought

in? What the Lady-day rents, and what the Michaelmas rents have been?—I am not prepared to answer that question; I have heard the last evidence say that the accounts come to me; it is very true they do; but they are sent by me to the clerk of the cheque; but the receipts, on account of the Derwentwater estate, are very various; they differ much, annually; because a great part of the revenue arising from the Derwentwater estate, perhaps a third, or more, arises from the lead mines; they have a great quantity of lead on hands, sometimes; they don't sell it for two or three years together; and that occasions the difference between the net receipt of the Hospital one year with another.

Do you think the net revenue of the Derwentwater estate is less since 1778 than 1771?—I do not know what the net receipts were; the rents have certainly increased; the mines differ much; one year may produce 8,000*l.* another not half the money; mining is exceedingly uncertain.

There is a valuable rectory upon this estate?—The rectory of Simonbourne, I presume, your lordship alludes to?

What does that bring, annually, to the rector?—I have heard 1,000*l.* a year, or more.

Who is the present rector?—The rev. Mr. Scott.

Was he ever at sea?—I never heard that he was.

Are there not, frequently, on board of men of war, clergymen that might have that divided among them, that it might be of use to?—There certainly are many chaplains in the navy; and certainly 1,000*l.* a year would bear a division.*

Was not there a perpetual advowson bought with some of Greenwich Hospital money?—Greenwich Hospital was originally entitled to a third part of tythes, and a third part of the presentation to the vicarage of ———; they have bought the other shares of tythes, and of the presentation; and the purchase made no great difference; the other thirds of the presentation, and of the tythes, was thought an eligible thing for Greenwich Hospital to be possessed of; the living was not more than 50*l.* or 60*l.* a year; and it was thought worth while to have a clergyman in that part of the country.

* In Mr. Baron Maseres's "Moderate Reformer, or a Proposal to correct some Abuses in the present Establishment of the Church of England," it is stated, that the parish of Simonburn is 36 miles in length, and 14 in breadth, and it is suggested, that it might be divided into at least four lesser parishes: and in 1811, an act (stat. 51 G. 3, c. 194) was passed, for erecting five distinct rectories and parishes within the rectory and parish of Simonburn, and separating the same from the rectory and parish church of Simonburn, and restraining the commissioners and governor of Greenwich Hospital from presenting to the rectory of Simonburn, or the said new rectories, any others than chaplains in the royal navy.

Who has it?—Mr. Lancaster; he has been presented to it a great many years.

Has he been at sea?—I do not know.

Where did he come from?—I imagine he is of that country; a Cumberland man.

Then it is probable that he never was at sea?—A Cumberland man might be at sea as well as a man of any other country.

[Mr. Ibbetson withdrew.]

Friday, May 14, 1779.

Rev. Dr. *Shepherd* called in by the Earl of *Sandwich*.

Whether you were ever applied to, by any body, to propose to lord *Sandwich* an accommodation with captain *Baillie*?—I was.

By whom was that?—It happened by the following accident.

By whom was it?—Mr. *Murphy*; it happened from the following accident; as lesser* and fellow of *Christ's-college*, in *Cambridge*, I had a law-suit tried at ——— assizes, last summer, in which Mr. *Murphy* was one of my counsel; coming to town, a little before the last *Michaelmas* term, I called upon Mr. *Murphy* at his chambers, to ask his opinion, whether it would not be expedient to have a new trial; having finished the conversation upon this subject, Mr. *Murphy* pointed to several bundles of papers in his room, and said, all those concern a friend of your's; this he explained, by saying, they were the charges of captain *Baillie* against lord *Sandwich* and the officers of *Greenwich Hospital*; he said it would be a very troublesome affair, and he could wish to recommend it to his lordship to make it up; he added, that captain *Baillie* had commissioned him to say, that he would take an equivalent for his office; had he any acquaintance with lord *Sandwich*, he would have made this proposal to his lordship from the captain; I know you have, I wish you would do it; I have made the same request to Mr. *Garrick*. I heard all this, took my leave of him, but made no answer.

When, in that [qu. what] month, did this happen?—It was either in the last week of *October*, or the first of *November*†; and on my return home I considered of the matter, and determined not to mention it to my lord; thinking it was not for his lordship's honour, to enter into a private treaty with a person who had accused him publicly.

[Rev. Dr. *Shepherd* withdrew.]

Lancelot Brown, Esq. called in.

Whether, at any time, you were desired to make any proposals to lord *Sandwich*, of an accommodation with captain *Baillie*?—I was; in *November* last, I went to *Serle's* coffee-house in the evening, I think it was the day

the rule was discharged in the court of *King's-bench*; I saw Mr. *Murphy* there; the subject of the conversation, at that place, was relative to *Greenwich Hospital*; Mr. *Murphy* joined in the conversation. I said to him, I think your friend captain *Baillie* has gained a defeat, by the judgment of the court of *King's-bench* to-day. Why, says he, I hope lord *Sandwich* does not mean to dismiss him from his office. I said, why I see no reason he should not do it. He took me aside to another box; he said, if lord *Sandwich* would not proceed farther in this business, captain *Baillie* would be very willing to give up all his papers, otherwise they must be printed, and I wish you would tell lord *Sandwich* this. I took the earliest opportunity, I believe the next morning with his lordship at breakfast; he despised the threat of his publication, and said, he would hear no more of the subject.

[*Lancelot Brown, esq.* withdrew.]

Edward Bearcroft, Esq. called in.

I beg to know, whether you were one of captain *Baillie's* counsel, in the court of *King's-bench*?—I was.

Was Mr. *Murphy* one of his counsel?—He was.

Had you any authority, from captain *Baillie*, to treat, in order to bring about an accommodation between him and lord *Sandwich*?—I have already said, that I was one of captain *Baillie's* counsel; I know nothing that has the most distant relation to the business before your lordships, but strictly and merely in the character of counsel to captain *Baillie*, in the court of *King's-bench*, before that business came on; in that situation I conceived, and I trust your lordships will be of the same opinion, that I ought not to be examined to any thing that passed between captain *Baillie* and me, merely and simply; I repeat the words again, because they convey my idea upon the subject, in the character of client and counsel.

The Earl of *Sandwich*. I have no desire of examining you, unless captain *Baillie* consents that you shall be examined; and therefore I desire captain *Baillie* may be called to the bar.

Captain *Baillie* called in.

I desire captain *Baillie* may be asked, whether he consents and desires, that Mr. *Bearcroft* should be examined, touching the proposal of an accommodation with me; Mr. *Bearcroft* being his counsel?—A. I do not rightly conceive upon what points your lordship speaks to.*

The Earl of *Sandwich*. Upon the proposal of an accommodation between you and me.

Capt. *Baillie*. I wish Mr. *Bearcroft* may speak to every thing in general that he was employed in by me, relative to the whole transactions of *Greenwich Hospital*; I have

* So in Orig.

† This was before the trial in the court of *King's-bench*.—Orig. Ed.

* So in Orig.

no secrets; I told your lordships before, and shall be very happy that he may be examined upon every point your lordships think proper.

Mr. Bearcroft called to the bar again.

Had you any authority from captain Baillie to treat, in order to bring about an accommodation between him and me?—My lords, I understand captain Baillie, and I wish he would understand that I do so understand him; that he has no manner of objection to my disclosing any thing that I happened to know from him. Is it so, Sir?

Capt. Baillie. Yes.

Mr. Bearcroft. I never had any direct authority from captain Baillie to propose any accommodation with my lord Sandwich; but I would give what will be an answer to the question; I presume that is an account of any thing that relates to a proposition of an accommodation in any degree on the part of captain Baillie. I was one of the counsel for captain Baillie; after some conversation with him, seeing a state of his case, and an acquaintance with the affidavits that he meant to produce, I was struck with a strong wish to serve captain Baillie; upon the consideration of what was the best way to serve him, it struck me that an accommodation was the best way to serve him; I was determined to propose it, as far as it became me in the character of counsel, to do it, and not to go a bit further out of that character; I told captain Baillie, therefore, that I was very ready in any way to sound the counsel on the other side, if such a thing was practicable; I therefore desired to know of him if he had any objection to that being done; I will do captain Baillie complete justice; he seemed to me at first to be extremely averse to any thing of the kind; at last, I perfectly recollect that he did authorise me to sound at distance the counsel on the other side, whether any accommodation could be made of the business, and that before it came on in the court of King's-bench; in consequence of that authority, I did at a distance, and a very great one, sound the counsel on the other side, meaning that it should not be understood on the other side, that I had any actual authority, or desire on the part of captain Baillie, to make such an application; I received such an answer, that discouraged me from going any farther; the particulars of the answer I do not recollect, but it gave me an idea that nothing of the sort would be hearkened to, and therefore I desisted; that I reported to captain Baillie.

Do you recollect whether captain Baillie had any conversation with you and Mr. Murphy at your chambers upon the subject of your negotiating for him?—Most certainly; at several different times.

Can you tell whether captain Baillie consulted most with you or Mr. Murphy upon this subject of negotiating?—I cannot say at

all; it appeared to me that he consulted us both equally.

Can you tell who settled captain Baillie's affidavits for the court of King's-bench, and prepared his brief for counsel?—I believe, and am sure, indeed, that Mr. Murphy settled the affidavits; I am sure it was so.

Do you think that Mr. Murphy was as much captain Baillie's confidential counsel as yourself?—It is extremely difficult to measure the degrees of confidence in the situation of the several counsel; but I have no reason to observe, or upon recollection to say, but that equal confidence was reposed in either of us.

Did you, in consequence of the authority given to you, or agreed between captain Baillie and yourself, attempt to bring about any kind of negotiation?—I certainly had authority, as I before meant, and I hope did declare to your lordships, to sound the counsel on the other side, in the business in the court of King's-bench, to try if there was any probability that such a thing should be carried forward.

The Earl of Sandwich. Did you ever hear, receive, or know of any proposal made by me, or by any body employed by me, to negotiate?—No, my lord; certainly not.

Mr. Bearcroft has been asked, whether he was present at any meetings with Mr. Murphy and Mr. Baillie where this business was talked of?—Several, I think.

Whether that was prior to the decision in the court of King's-bench, or subsequent?—Prior, I believe; I am almost sure.*

[Edward Bearcroft, esq. withdrew.]

Arthur Murphy, esq. called in.

Whether you had any authority to treat with Mr. Butler at the time of your conversation with him at Serle's Coffee-house?—I hope the noble lord will pardon me, if before I answer the question, I beg leave to address a few words, a very few to your lordships; I am aware that I troubled your lordships when I was here before with objections to being examined. I do not come now to demur to a single question; but I must beg leave to say, that to the objections that I then had, I hope your lordships will allow that I may add to the catalogue of my objections to my future government some additional ones, because I could not foresee then every thing that happened; I could not foresee, that after I had given my evidence, captain Baillie standing at my elbow, that three days afterwards, he was to be called to your bar, behind my back,† without notice to me to read a prepared—

* It is no wonder captain Baillie should have consented to a negotiation at the desire of his counsel, when he was ready to be overwhelmed with six prosecutions; but it is very unlikely he should propose one when all the rules were discharged, to the general joy of a crowded court. *Orig. Ed.*

† Mr. Murphy must know that no witness dare reply, without being called upon so to do. *Orig. Ed.*

I don't know what to call it; I don't wonder at captain Baillie's struggling; I don't wonder at his speaking the language of disappointed passions; but it would have been manly in captain Baillie (for I have been used where a witness has been contradicted to see them confronted) it would have been manly then to have desired it whilst I was here; since that was not done, notice of the three days preparation might have been given to me as a gentleman at the bar; and though I do not pretend to be of a size to have deserved that from any lord of parliament; yet I do presume to say that might have been a delicacy not unworthy of any lord of parliament; having said that, I beg leave to say to your lordships that I have in my hand an extract of all the passages in captain Baillie's last evidence that relate to me; and I do beg that there may be reference to the notes, that it may be seen whether I have extracted them fairly myself, that I may comment upon them paragraph by paragraph.

[Arthur Murphy, esq. withdrew.]

Monday, May 17, 1779.

Arthur Murphy, esq. called in again by lord Sandwich; some objections made by lords on the other side, but carried in the affirmative.

Whether there was any injunction of secrecy laid on captain Baillie respecting the negotiation?—There was, in the strongest terms that could be required.

By whom?—By me; and it was on the morning after I saw lord Sandwich at the Admiralty, on a Tuesday, I appointed Mr. Butler, who was at the Admiralty at the same time; I was to be at my chambers the next day at eleven o'clock; I told him I should let capt. Baillie know it, that the meeting should be at that time, and in Mr. Butler's presence, before I opened a single syllable of the conversation I had with lord Sandwich, I stipulated secrecy for myself, telling him I knew mention had been made in this house of an enquiry, and that, let what would come of the negotiation, I desired never to become a witness or have my name mentioned about it, and endeavoured to impress upon his mind, as strongly as I could, the nature of all negotiations of that kind, that gentlemen wished to have them private, and therefore he did promise secrecy absolutely respecting me.

Was that with or without any condition?—An absolute general promise, and I did not at that time think him capable of any mental reservation whatever; if I had thought so, I should not have entered at all into the business.

Did lord Sandwich impose secrecy?—The only word out of his lordship's mouth that could import any thing like it was what I mentioned when I was here last, "I converse with you because I believe, or know you to

be a man of honour;" I understood them thus; I talk with you as a man of honour, and therefore rely upon your honour, that you will at all times do me justice relative to this conversation.

Had capt. Baillie any reason to believe that lord Sandwich required secrecy?—Not a word of the kind dropt from me, and I should have done lord Sandwich injustice if I had represented that ever his lordship did require secrecy.

For whom then did you require secrecy?—For myself alone, giving every reason that occurred to me, telling how odious it would be to me at any time to be a witness.

Do you know of any authority given by capt. Baillie to Mr. Bearcroft to negotiate for him?—I was not present when that matter first passed between capt. Baillie and Mr. Bearcroft; the first I heard of that which was from Mr. Bearcroft, before I heard of that capt. Baillie and I had conversation upon that subject; Mr. Bearcroft told me capt. Baillie was willing to negotiate and compromise the matter if it could be done; I told him I always found him so disposed, he said he found some difficulty with him. I said I found none, for upon that subject he always seemed consistent; I was then drawing out the affidavits from him. I said I always found him consistent with what he had sworn to; the purport of the affidavits was, that he was always willing to resign upon a compensation; I always understood him to be willing to quit the Hospital, if that could be done for him. From the first time I saw capt. Baillie, I still was employed in drawing his affidavits, a thing I never did for any man in my life before. I said I should like to go to Mr. Bearcroft's chambers to tell him the plan upon which I was going to draw up those affidavits; he went with me, after a little conversation upon the subject of the affidavits; we then talked of negotiating; it was the clearest, the fullest consent to both of us to bring about a negotiation if we could. Mr. Bearcroft then, in capt. Baillie's presence, proposed how he should do it; he said we will talk to the Solicitor General; if he will encourage us to treat with him, we will go up into his chambers, shew him our briefs, we will shew him how the rule in the King's-bench must be discharged, and give him every reason why it is better to end the matter in this manner, and do it if we can; nothing more passed in the presence of Mr. Bearcroft.

Did Mr. Bearcroft and you talk with the Solicitor General on that subject of negotiation?—I believe Mr. Bearcroft did, for he told me so; I myself did, but had not sufficient encouragement from the Solicitor General to go very far. I made all the approaches to it that I could, and as I said before, he gave those half expressed answers that I collected from him; he had no authority I believe when I first spoke to him, that he had not his brief; he signified, that if

there was any such intention, he should hear of it.

Did you mention it to captain Baillie?—Yes, I did, and that I should certainly try it in another way. I had seen Mr. Garrick.

Did you try it any other way?—I had occasion to see Mr. Garrick, which I did in the latter end of October, and understanding that Mr. Garrick was living in society with lord Sandwich, I took occasion to mention it to him. I never saw Mr. Garrick afterwards, so I did the same to Dr. Shepherd. Capt. Baillie was in my chambers at the same time; I remember as soon as Dr. Shepherd was gone, I told captain Baillie that I believed that was a nail that would drive; I told him of Mr. Brown also. I told him constantly what expectations or hopes I had. I told him all I did; he never retracted the authority he had given; he never countermanded them; on the contrary, he always seemed pleased with every effort I told him of.*

When were you retained by capt. Baillie?—I think in the month of March was twelve months. I was on the circuit, when he applied to me; I went into the coffee-house, when I came to town, before I went to my chambers: they said a captain Baillie wanted me; he asked them if there was any attorney I particularly used; they happened to know that Mr. Shepherd, in Boswell-court, had been employed on my recommendation; he went to him, and he came with a retainer to me; then I saw captain Baillie and his pamphlet for the first time. I gave him my opinion about his pamphlet. I said I should be glad to see him the next Sunday; from that moment I believe I was captain Baillie's confidential adviser throughout: I was the person that advised him to retain Mr. Bearcroft; he said Mr. Dunning and other gentlemen of great eminence, he had been at their chamber, they were retained; I said I could not stand alone; there goes by a gentleman, a king's counsel of great abilities, retain him, that was Mr. Bearcroft.† I did every thing when his enquiry was depending; if he delivered a letter to the directors—who wrote it for him?—I. —If a letter to the Admiralty, who wrote it for him?—I.—When his affidavits were to be wrote, there were 200 sheets, who was to draw that? I said I would.

Did capt. Baillie ever desire you to make these applications?—I do not know that he desired me to make them; I have not said that. I think when I was here last, I said as my recollection is, he did not immediately de-

* It is very extraordinary that captain Baillie, who, by Mr. Bearcroft's evidence, was so unwilling to treat even before the trial, when fine and imprisonment stared him in the face, that he should be so eager afterwards to catch at every straw. *Orig. Ed.*

† Mr. Bearcroft was absolutely retained from a particular friendship, in a part of captain Baillie's family connections with Mr. Bearcroft's brother and son, and Mr. Bearcroft has proved himself an honourable man. *Orig. Ed.*

sire me, but he knew of them and approved of them, and so I stated in a letter I had the honour to write to his grace the duke of Richmond.

What was the date of that letter?—The sixth of April.

Had capt. Baillie any reason from you to suppose that Mr. Butler's direction came immediately and directly from lord Sandwich?—If captain Baillie means by the message or answer I had from lord Sandwich, by Mr. Butler, I did myself understand it came directly from lord Sandwich, and I told him so.—If captain Baillie believes that I had on the Monday, or any other day during my life, any message from lord Sandwich, he had not the smallest reason for it; for I never received any message from lord Sandwich during my whole life, except as I said before, that I had an invitation on the circuit to sup at Hinchinbroke.

Did captain Baillie ever tell you that he heard it rumoured in the Hospital, that it was intended to remove him by giving him an equivalent?—Captain Baillie told me he had heard in the Hospital, that the directors had presented a new Memorial to the Admiralty, requesting that captain Baillie should be removed from the Hospital, with an equivalent provision; I said if that is done, that will be like men of honour, that will be an end to this whole matter, and very fair for you.—The next time he saw me, he said there was no such thing; I said I had reason to believe it was mis-information, for I understood from Mr. Brown to the contrary, that there was an intention to dismiss him.

Was the meeting between you and Mr. Butler at the coffee-house in Lincoln's Inn accidental, or otherwise?—I said before it was from Mr. Thrale's I came, that is hardly worth correcting, I believe it was from another part of the country that I came—I came by chance that morning into the coffee-house; I saw Mr. Butler; it was purely accidental on my part; Mr. Baillie has since often asked me, whether Mr. Butler might not put himself in my way on purpose, that I have said I could not possibly say; it was accidental on my part.

Who began the conversation upon that subject?—Whether Mr. Butler came there accidentally or not, I cannot say, but in the way the conversation was between us, I was the first mover of it.

Did captain Baillie himself negotiate with Mr. Butler?—Yes, he did, but not at that time; I believe he was not so much as acquainted with Mr. Butler till I, on the Wednesday morning following, introduced him.

Did you, on the Wednesday, say any thing to captain Baillie of the meeting between you and Mr. Butler on the Friday?—When we met on the Wednesday morning, I introduced Mr. Butler to him; Sir, this is the gentleman to whom you are obliged for carrying my message to lord Sandwich; then I told him all that had passed relative to that matter

over in Mr. Butler's presence, telling captain Baillie, that my reason for taking all that up so early was, that Mr. Butler being present, might correct any mistake.

Charles Butler, esq. called in again by Lord Sandwich.

The Earl of Sandwich. Mr. Murphy considered you, I believe, as my counsel?—He did.

In that capacity, had you any particular directions from me to make that negotiation secret?—I had not the slightest directions from lord Sandwich, at any time, to make the negotiation secret.*

Did you desire captain Baillie to make it a secret?—I certainly did, at both the meetings which I had with captain Baillie at Mr. Murphy's chambers. At the first meeting, the first thing that was said, was a desire that an agreement on all parties, that whatever turn the business might take, that it was to remain an entire secret. I had not any particular directions from lord Sandwich to make that agreement, but I thought it was my duty to do so, and I believe it was.

Did Mr. Murphy, at the first meeting at his chambers, inform captain Baillie of what had passed at Serle's coffee-house?—The first thing that Mr. Murphy said at his chambers, after mentioning, that whatever event the business might have, it was to be kept a secret, was to inform captain Baillie of every thing that had passed at Serle's coffee-house, and applying to me to say, whether it was accurately told or not.

Do you think it was possible for him to suppose, that the first time you came to Mr. Murphy's chambers, was the first time you had ever spoke to him of the business?—It was utterly impossible, in my apprehension.

Whether you have ever said that captain Baillie was a man of an ungovernable intemperate mind, that he made himself odious to every rank of men in Greenwich Hospital?—I never used those expressions, either in this House, or out of this House; being desired, and I may say, compelled to repeat what had passed between lord Sandwich and myself, I thought I was bound by my oath to represent what lord Sandwich had said; his lordship said captain Baillie was a man of an ungovernable mind, and had made himself odious to all ranks of men in the Hospital. It would have been exceedingly indecent, I apprehend, for myself to have said so, I only represented it as what I heard another person say.

Was not the rev. Mr. Cooke present at the meeting you had with lord Sandwich?—He was.

Was Mr. Cooke ever told that what passed at that meeting was to be kept a secret, to your knowledge?—I believe he was. I know

I considered myself concerned in a very nice business, and therefore it was my constant language to all parties not to mention it; I therefore believe it was mentioned to Mr. Cooke, but at this moment of time, I cannot immediately recollect that it was, but I believe it was.

You considered the business of so delicate a nature, that it ought to be a secret. Do I apprehend you might?—Yes.

Then be so good as to explain why nothing was said to Mr. Cooke that you know of, to tell him he was to keep it a secret?—I endeavoured to tell your lordships, and perhaps I was unfortunate in my manner, I believe it was mentioned to Mr. Cooke, but I don't know that it was; I considered that every person that was concerned in the business at all, whether he had an obligation of secrecy immediately imposed upon him or not, he was equally bound to keep the matter secret, because an affair of that kind cannot be mentioned in the world, without each side misrepresenting it some how; that misrepresentation, I was cautious of, and therefore I, all along, recommended, as I think it was my duty to do, secrecy on all hands.

By whom was that mentioned to Mr. Cooke?—I believe by myself; I am certain it was not mentioned to Mr. Cooke while my lord Sandwich was present. Lord Sandwich retired into another room from that which the conversation was carried on in; after that Mr. Murphy and myself talked some little time, and a very short time, with Mr. Cooke; I do not recollect that it was mentioned there that he was to keep it secret; but as I have seen Mr. Cooke frequently since, and as I was anxious that the matter should be a secret, I think it exceeding probable, though my memory does not furnish me with any precise recollection, that I did enjoin secrecy, but I am sure, in lord Sandwich's room, in his lordship's presence, no secrecy was enjoined to him.

Whether it was or not mentioned to Mr. Cooke, do you know whether he ever did divulge it?—Perhaps I may say a thing singular; but if I had known that Mr. Cooke had mentioned it, I should say that that was matter of opinion; but as I have not the slightest idea that Mr. Cooke ever mentioned it to any one person, I can only answer, that to the best of my knowledge and information, he did not; he may have done it, but I never asked him about it.

Have you any knowledge or particular reason to believe that captain Baillie was the first person that ever did mention it?—I have a suspicion that he did mention it, but it is exceedingly slight.

Not enough to speak to as a matter of knowledge?—I am so far certain in my own mind, that I believe it, but I have not that information which I could produce to this House, or any company, that he had done it.

Can you recollect how many people were in

* Then why should one party be bound to secrecy, and not the other? Orig. Ed.

this secret?—I can only answer to one person. That no one person ever heard it from me.

How many were acquainted with the secret?—Lord Sandwich, Mr. Murphy, Mr. Baillie, Mr. Baillie's brother, and myself.

And Mr. Cooke?—Yes, and Mr. Cooke.

[Mr. Butler withdrew]

Rev. Mr. Cooke called in.

Whether you at any time used any expression of intimidation to Mr. Lefevre, such as saying, that those persons would be marked by lord Sandwich, who shewed themselves attached to captain Baillie?—I never did circulate any reports, upon my lord Sandwich's authority, about Greenwich Hospital, nor did I circulate such a report as is attributed to me, nor did I assume any authority from any body to do it.

The question is, whether you did ever say such a thing to Mr. Lefevre?—I never did say any such thing to Mr. Lefevre.

Then I ask you upon your oath, whether there ever did come out of lord Sandwich's mouth to you, any authority, or any words that led that way, that lord Sandwich would mark persons who sided with captain Baillie?—Never.

You had no such authority from lord Sandwich?—Never.

Did you ever make use of any such word?—I never did make use of any such expressions from lord Sandwich, or any person whatever.

Did you ever make use of any such words to any person whatever?—I never did to any person whatever.

I beg Mr. Cooke to answer whether he had ever any conversation with Mr. Lefevre at all?—I have had conversations with Mr. Lefevre, and as it is a thing of very great consequence to me what he has advanced at the bar of this House, I have taken some pains to recollect, though I cannot possibly be accurate to every part of the conversation.—The first conversation was at the distance of near three years; the second conversation is more than a twelvemonth; the latter is of a later date; I have therefore taken a great deal of pains to recollect the conversation that has passed between Mr. Lefevre and myself at various times, and particularly at those times which he has mentioned; I have committed those to paper; if your lordships please to hear them, if not, I am ready to answer any question the committee may be pleased to put to me.

If any questions I ask you are such as you do not choose to answer, be so kind as to say so, and I shall not press them. Do you recollect the dates of those conversations which you have had with Mr. Lefevre the younger, concerning the affairs of Greenwich Hospital?—I have had some conversations with Mr. Lefevre relative to the affairs of Greenwich Hospital.

Recollect at what time?—I think in the month of June, 1777.

Do you recollect any other?—And I recollect having a conversation with him at the time he mentions, some time about April, when he says I went to his father's.

In what year?—April, 1778, and, I think, June, 1777; I have had various conversations with him at various times.

At what places were those conversations held?—The first conversation was, I think, on my journey into Suffolk; I am vicar of a small living in Suffolk, we were upon the utmost intimacy at that time; I asked him to accompany me thither, he consented to it; accordingly we set out, and on our journey, among other things, we talked of Greenwich Hospital, and we talked of Mr. Baillie, and of Mr. Baillie's conduct; I had thought well of Mr. Baillie; I had reason to think otherwise of him at that time; I mentioned to him, that I thought his conduct in the Hospital was such as was very unaccountable, and I should not at all wonder if he was taken notice of for it; Mr. Lefevre at that time joined with me; he was at that time more intimate with me than he was with captain Baillie; I told him, I thought his conduct very improper in the Hospital; he thought so too; he acquiesced with me; and at that time, why I held out captain Baillie's behaviour to Mr. Lefevre, was, that I thought not only that he had behaved improperly with respect to his conduct at the board of directors, and at the council, but I thought he had behaved improperly in not considering those who had appointed him there, and I held captain Baillie out to Mr. Lefevre as an example of ingratitude, that he should avoid. When we got to my living, we went upon a visit to my brother at Levenham, where it has been said, I received an extraordinary letter from the steward at the Hospital. I did receive a letter from the steward, Mr. Godby, who wrote me a letter respecting the case of the butcher; it is said there was extraordinary expressions of exultation and triumph in favour of the butcher in that letter. I remember no such expressions as Mr. Lefevre has made use of. I read this letter to my brother, who was then present, and Mr. Lefevre; I believe nobody else was present; it did not remain upon my mind; I tore the letter, or burnt it—I threw it away, I thought no more of it; it was a matter of no consideration at all to me. After this, in our journey home, we again talked of the affairs of Greenwich Hospital, much to the same purpose I have mentioned now, but after I got home between that time and the Dec. 1777, Mr. Lefevre, as he always used to do, he used to consult me about his affairs, and about his promotion, and I must tell your lordships I was even instrumental in his being made a lieutenant; he consulted me upon that. I said, Mr. Lefevre, I think the only way you have to get promoted is to go to sea; you have never been at sea since you

was made a lieutenant. He renewed then to me an offer that he had made at my brother's, that if I would get him made master and commander, he would get me presented to a considerable living in the gift of a Mr. Calcroft; that was his conversation with me; I told him I was much obliged to him for his kindness to me, and indeed I did not wonder at hearing him talk of offering me a favour, which I did not think a favour of that magnitude; I told him my only advice to him was to go to the Admiralty, to go to lord Sandwich, he had promoted him before, and if he offered his services, he would remember him. He went to the Admiralty, he said he was well received; I found afterwards that he had been so, for the next thing I heard was he was employed, and sent on board the *America*, fitting out at Deptford; after this, in April 1778, Mr. Lefevre says I went to his father's.

My questions are not relative to Mr. Lefevre's preferment, but relative to the affairs of Greenwich Hospital. What passed at the first conversation relative to the affairs of Greenwich Hospital and captain Baillie?—In April 1778, Mr. Lefevre has said at this bar, that I went to his house, where I threatened him and his father; the fact is, I did not go to his house, he first came to my house with his father, I was not at home, he left a message desiring I would call upon him as soon as I returned; I went home very soon after, and being told the message, I did call upon him immediately.

At what time was this?—In April, 1778, I think.

I first desire to know the conversation in 1777?—Respecting that, I mentioned that we had a conversation relative to the affairs of Greenwich Hospital; I told Mr. Lefevre I thought captain Baillie acted improperly in the affairs of the Hospital, and I really thought his behaviour would be taken notice of.—That was all that passed between us at that time.

What did you mean by saying you thought it would be taken notice of?—I really thought the board of directors would complain of him; that was my opinion, and it was not only my opinion, but I mentioned it to the governor.

What was your idea that they were to complain of?—That he was thwarting every thing that could be done, he thought nobody's opinion a good opinion but his own.

Did you imagine that a matter for the directors to complain of?—There were a great number of propositions to the board that the majority thought proper of, and I thought if he opposed them, he was not a friend to the Hospital.

Was not it possible that captain Baillie might have an opinion of his own?—Certainly.

And was that, in your opinion, a crime to be taken notice of in the board of directors?—I don't say a crime; it was a kind of persevering behaviour, that became uncomfortable and disagreeable to every person that sat there.

Did you think that the directors would complain of captain Baillie, for making them uncomfortable and disagreeable, for pursuing his own opinion?—Not for pursuing his own opinion; but that he wanted to counteract the proceedings of the board, that were for the good of the Hospital, as it was my opinion, and several others at the time.

Did the court of directors ever take up the conduct of captain Baillie, in which it was evident that the opinion he supported, was, in his own opinion, contrary to the good of the Hospital?—I do not know what captain Baillie might think in his own opinion; my opinion was, I thought so.

Was there ever any offence in captain Baillie that the court of directors could take notice of, except differing in opinion from you and the rest of the gentlemen there?—I think there were there a great number of things occurred.

Among the great number of things try to recollect one?—I do not particularly recollect any.

So then, you think, the directors intended to take notice of captain Baillie's conduct; but you have totally forgot what they intended to take notice of?—The impropriety of his behaviour, and leading us a very disagreeable life with him at the board, I thought very sufficient.

Can you mention any instance of captain Baillie, at that time, having done any thing that was contrary to his duty as lieutenant-governor?—I have thought so; I cannot particularly recollect, at this time, any particular circumstances; I don't think that his behaviour was that that tended to the good of the Hospital; that was my opinion.

But can you mention any instances of that behaviour, such as deserved to be taken notice of by the court of directors?—There were complaints came before the board of directors, relative to captain Baillie's improper behaviour, which I approved of.

At that time?—I don't say at that particular time.

But I am asking you to the month of January, 1777.—I don't pretend to say at that time.

Had captain Baillie taken any steps to create disturbances in the Hospital?—I cannot directly answer that question; he had disturbed me very much, and disturbed a great number of others.

In what way? Had he ever been drunk in the Hospital?—Not that I know of. I should think not.

Was he ever riotous there?—Not that I know of.

Did he ever beat any pensioner?—Not that I ever knew or heard of.

Did he ever beat any of the officers?—Not that I ever heard of.

In what way did he disturb you?—He was a very unpleasant, a very disagreeable, and obnoxious man to me.

But I want to know one instance in which he has ever acted contrary to the good of the Hospital, or attempted to make a disturbance?—I never made minutes of what passed at the board; I am only mentioning that he is a very disagreeable person to act with.

Did you understand any other notice would be taken of him? You say you told Mr. Lefevre his conduct would be taken notice of?—I said I should not wonder, if his behaviour continued in that way, if it should be taken notice of; or that it might be taken notice of.

And did you mention nothing of his being taken notice of by lord Sandwich?—Not a word. How was it possible I could mention a thing of that kind? The book was not published till March, 1778, following; and this was a charge in his book.

That is the very reason why I supposed the conversation must pass before the book was published.—There was no other conversation than I mentioned; I said, I thought his behaviour very improper; that it was impossible to act with him at the board, or any where else, almost; and I should not wonder if it should be taken notice of.

You will now go to the other conversation, when you saw Mr. Lefevre with his father.—Mr. Lefevre mentions that I went to his father's; I did not go to his father's without being asked to go; I then went to Mr. Lefevre's house; I asked Mr. Lefevre what he had to say to me; he began with saying he was very sorry that Mr. Baillie had put forth his book; I answered, I was sorry for it too; he said he was under some fears or apprehensions that it would be thought he had taken a part with captain Baillie.

Who was this; the father?—Yes. My answer was, as near as I can recollect, I won-

* The death of Mr. Lefevre, of respectable memory, has been an irreparable loss to captain Baillie. *Orig. Ed.*

The following abstract of his affidavit filed on behalf of captain Baillie in the Court of King's-bench, was published by the latter in his 'Introduction,' &c.

ABSTRACT of the Affidavit of WILLIAM LEFEVRE, Lieutenant in the Hospital, and oldest Lieutenant in the Navy. [Memorandum, Dead since the commencement of the Prosecution.]

He swears, That he has been lieutenant in the Hospital 12 years, and intimately acquainted with the lieutenant-governor Baillie 30 years; that during the whole time, he the said lieutenant-governor has conducted himself with the strictest honour and integrity, and has always shown himself a true and zealous friend to the pensioners, and a most vigilant and faithful servant to the noble establishment, without view or interest to himself.

He swears, that in April, 1771, there was a great disturbance in the Hospital, on account of Mr. Secretary Ibbetson taking down several cabins, and driving the poor men, the inhabitants, out, in order to enlarge his apartments, and make room for his footmen.

Captain Baillie then warmly interested himself in

der you should think so. Yes, he said, he was afraid it might reach lord Sandwich. I said, I wonder you should think any thing of that kind; lord Sandwich is not of a turn of mind to listen to idle reports of that sort. He said, if any thing should be said of that kind, I wish you would express that I have no concern in it: but I am very sorry for captain Baillie; he has been an old mess-mate of mine. I mentioned also, at the same conversation, that there was the book I was accused in, and others; but, I said, what I wonder at is, that he should have been so ungrateful to lord Sandwich, as to have brought him so much in question in that book. Mr. Lefevre said he also was very much concerned. I said, I don't wonder at your concern for captain Baillie, for you have been an old and long acquaintance of his. I don't remember, at that meeting, any warmth of conversation that passed, of any kind; I remember no quarrel; there was nobody present but Mr. Lefevre, the father, the son, and myself; we parted in good humour; and I am sure, when I went from that house, I was as much inclined to do any act of service for young Mr. Lefevre as I ever was during the four or five years I was acquainted with him before.

behalf of the pensioners, and got the men restored to their cabins. This, he swears, drew the malice and resentment of the said Ibbetson against the lieutenant-governor Baillie.

He swears, the grand passages to the Royal George ward are taken in by the civil officers, to enlarge their apartments, contrary to the interest of the establishment, and to the injury of the pensioners.

He swears, that in September, 1772, there were universal murmurings amongst the men, on account of the short allowance of meat served; and through the activity and zeal of the said lieutenant-governor Baillie, the theft was discovered, and the delinquent, by the means of the said Baillie, was brought to justice, and transported.

He swears, that in year 1774, the said Thomas Baillie was the means of discovering, that the kettles were pillaged of large quantities of broth, which the then master cook had contracted to deliver to a hog feeder, and that the said lieutenant-governor Baillie was the chief instrument in rectifying that great abuse.

He swears to the affair of bull beef and the trials at Guildhall in consequence; and that it was by the vigour and activity of the lieutenant-governor, who devoted his whole time to it, that they had justice, no other director taking the least trouble.

He swears to frauds in the brewhouse, and a reformation brought about by the indefatigable lieutenant-governor Baillie.

He swears, that the lieutenant-governor Baillie, by his honest and upright intention, and by his protecting the establishment, has drawn on himself the malice and resentment of the civil interest, and that they have frequently at council, when he has been presiding as lieutenant-governor, treated him with undeserved disrespect and insults.

That the said lieutenant-governor Baillie has, during his the deponent's residence, always treated the officers with proper respect, and the men with tenderness and humanity.

Was that all that passed at that time?—It was; there was no warmth of conversation, that I recollect, of any kind; we parted in good humour, and as a demonstration of that, Mr. Lefevre and I were acquaintance afterwards; he and his family dined with me before he went upon the service he was ordered on in the America.

Did you ever express to Mr Lefevre your astonishment that he should continue to keep company with captain Baillie?—No, I never did say that I wondered he should go to his house, or any thing of the kind; so far from it, that I have often told Mr. Lefevre, that I did not wonder at his anxiety for captain Baillie, because they had been old mess-mates; as to young Mr. Lefevre, he had nothing to do in the Hospital; he did not belong to it, and that impression I am sure I have, I never went to his house, or ever mentioned any expressions of intimidation at any time; I was always expressive of regard to Mr. Lefevre, and I never was so much astonished in my life, as when he came here to give evidence against me; for if ever any one private gentleman was obliged to another in his life, I will venture to say he is obliged to me.

Were you present at the Admiralty, at the conversation between the first lord of the Admiralty, Mr. Murphy, and Mr. Butler, with regard to the accommodation of the dispute with captain Baillie?—I was there, but it was very accidentally; I was at the first meeting with my lord Sandwich, Mr. Murphy and Mr. Butler, respecting the negociation, but very accidentally so; I happened to be at lord Sandwich's, and Mr. Butler, I think it was, asked me, whether I would not go up and hear what passed.

What injunctions were laid upon you at that time, with regard to secrecy?—I do not remember any injunction whatever laid upon me for secrecy; but I looked upon it a business of that nature, that I thought it would be wrong for me to divulge any thing I heard said in that room.

How long after the first hearing of that injunction did you think it incumbent upon you to keep the secret?—I do not remember that I ever opened my lips about it, till I heard from captain Baillie's publication, that he had mentioned it in the introduction to his affidavits; the first thing that I saw of it, was in an extract from the Morning Intelligencer, or Daily Advertiser.

When was that?—I believe that publication was, when your lordships had began upon business.

Was that the first you ever heard of that negociation having been divulged?—It was; I don't know that I could from any conversation I had any where, drop a hint of any such undertaking, but I was no party concerned in it, nor did I look upon myself as such.

I did not ask you whether you had yourself divulged it, but whether you had ever heard it the subject of conversation, before you saw

that book; was it ever mentioned to you by any body else, so as to convince you that it had been divulged?—I don't recollect that I had ever heard it any where.

Then for any thing you know, it was a profound secret, till by captain Baillie's means it appeared in print?—I remember captain Baillie has said at this bar, that it was circulated about the Hospital, or something of that kind, but it never came from my lips; though not enjoined to secrecy, I kept myself very guarded about it.

It never came to your knowledge that it had been circulated?—No.

Did you ever know that it had got out any way to any person that was not present at the negociation?—No.

Did any person not present at that negociation, ever mention it in your hearing?—No.

I think you have said, you thought captain Baillie very troublesome, I beg you to name any instances wherein you think captain Baillie was very troublesome, or that he acted against the true interest of Greenwich Hospital, in regard to the pensioners?—I don't think he has been a friend to the pensioners altogether.

Was it not being a friend to the pensioners, the detecting the butcher that served them with bull beef, and getting the butcher's man transported?—I don't think that captain Baillie should have the credit of that altogether; I look upon that as an act of the board of directors.

Who carried on that prosecution against him?—The board of directors.

Solely?—As I understand solely, to the board of directors.

I should be sorry to remind a clergyman that he is upon his oath; you think that was owing to the board, and not to captain Baillie?—The governor brought it to the board, and the board took it up.

Who constituted, and how qualified are that board of directors, to sit as a board?—The Secretary can much better answer that than I can; I have authority from the board of Admiralty to sit there, and that is all that I know, and I believe I am legally appointed.

Has not captain Baillie merit in detecting the butcher's serving bull beef to the Hospital?—I think captain Baillie had merit in that, but I don't think he should take the merit of that altogether; there were other officers in the house that would have done that.

And captain Baillie did not carry on that prosecution?—He did not.

How long have you been a chaplain in the Hospital?—I have been appointed I think six years next November, and have been resident almost the whole time.

Whom did you succeed?—The reverend Mr. Tindal.

Was it upon his death that you succeeded him?—No; upon his resignation.

Whether you paid any thing for your ad-

mission to that place; Mr. Cooke will answer that or not, just as he pleases?—I beg I may answer that question; I certainly did not pay a single farthing, but did the duty there for a year and three quarters, without a single shilling.

Was any compensation of any sort made to Mr. Tindal, in resigning his chaplainship?—No compensation whatever; not a single six-pence.

Was any compensation made to Mr. Tindal's widow?—Not a single six-pence.

Did you pay any thing for being appointed a director?—I did; I do not come here to reserve any thing at all; Mr. Tindal had promised to resign the directorship to me, without any sort of terms at all. He held from it very much, and afterwards he mentioned to me, that he could not really give up the directorship without some trifling consideration; I was much hurt at this, particularly as coming from him; I had no idea of it myself at all; he had promised me again and again, that he would resign the directorship, and I did give him a small douceur for that.

What was that douceur?—Fifty pounds.

Had Mr. Tindal done the duty of the Hospital for some time, previous to his resignation?—No.

Who did the duty for him?—The reverend Mr. Brumhead did the duty for him; it had been done by deputy, I understand, for some years.

Do you know on what part the negociation arose for your succeeding Mr. Tindal, and for Mr. Tindal's resignation?—It proceeded from a friend of mine in Huntingdonshire; I understood there were two old lives in Greenwich Hospital; I desired a friend to write up to know whether they had any intention of resigning; the answer was, they had, that Mr. Tindal was very old, that he had offered terms to a great many, but they had not agreed.

Did this friend negotiate this matter with Mr. Tindal by letter, or by word of mouth?—There was a letter or two passed between them, and then I came up and negotiated with Mr. Tindal himself, and the terms were as I said before; there was nothing passed between us of any kind, but he was to have the income for his life; he lived about a year and three quarters, and I did the whole duty for nothing; he lived from November, 1772, I believe, till June, 1774.

Who received the pay of chaplain of the Hospital during that time?—I believe I received it, but I accounted to him for it; I do not exactly recollect whether I received it or not, but I think I did; however, I conceive it very immaterial whether I did or not.

Was there any agreement made between you and Mr. Tindal, that, upon his resignation, you were to give him the pay for life?—Upon his resignation I had agreed to give him all the profits of the chaplainship.

For the remainder of his life?—Yes; during his natural life.

And which you did pay him?—Yes.

I think you said, you succeeded Mr. Brumhead?—He officiated when I came into the Hospital.

Was Mr. Brumhead a curate to Mr. Tindal?—He was.

Had the other chaplain another curate?—No.

Then Mr. Brumhead did the duty for both the chaplains?—Yes; and did the whole duty of the Hospital for 40*l.* a year, I believe, and a chaldron of coals, I think.

Whether you have ever read, or understood, the original charter of Greenwich Hospital?—The original commission.

No; the charter, as granted by king George the 1st, upon the forfeiture of the Derwentwater estate?—There was no charter, only a commission.

Whether you have ever read the original commission, upon the forfeiture of the Derwentwater estate to Greenwich Hospital?—I have seen the original commission, but I never saw a word of the Derwentwater estate in it.

What does the original commission say?—I cannot recollect at present.

What are the directions as to the qualification of the chaplains of Greenwich Hospital?—I don't recollect that there is any thing in it relative to the chaplains.

So a man who has never been at sea is equally qualified for it?—I have seen the original act of parliament, which is founded upon the charter, which says, a chaplain of necessity need not be a seafaring man; I do not remember any thing in the original charter or commission, that mentions any thing about the chaplains of Greenwich Hospital.

Then do you come under that description, of a chaplain of necessity?—I don't know; it was necessary somebody should do the duty of Greenwich Hospital.

Have you ever been at sea?—I never was at sea in my life.

Then do you or not apprehend, that you come under that description, of a chaplain of necessity?—All that I know is, that I was appointed a chaplain to Greenwich Hospital by the board of Admiralty.

You mentioned you had given 50*l.* for the resignation of the place of director; what may the place of a director be worth?—That is according to the attendances; a person is paid for every actual attendance.

What is paid for an attendance?—Ten shillings, I believe.

How many attendances may there be in a year?—About once in ten days; it is optional whether they choose to attend or not.

Whether there is any other emolument whatever, arising to a director, besides the ten shillings for each attendance?—None that I know of.

What is deemed an attendance? And what is the nature of the business? How many

hours does it require you to be from home?—There are two, alternately, one at Greenwich Hospital, the other at Salters' Hall, in London; the time we stay there depends much upon the business; sometimes an hour and a half; two, three, nay, sometimes, upon extraordinary business, four hours; but generally two, or two hours and a half.

Then let a person live where he will, he must have the whole distance to go to the other meeting?—He is not obliged to go at all.

But to make it to advantage?—Yes.

Then if he attends every time, he may make a shilling a day of it; ten shillings every ten days?—Money is not the object, I believe, with any of the gentlemen; I am sure it was not with me; but for the public good of Greenwich Hospital, that the attendances are so good as they are.

More public spirit?—I believe so.

I think you said, that the transaction with Mr. Tindal, was settled at last with him by yourself; was there any writing passed upon that occasion?—There was.

Who drew up that writing?—An agent of mine, an attorney.

What is his name?—Mr. Astley.

Were there any witnesses to the execution of it?—I believe there were; it was regularly executed.

Who were they?—I do not at this distance of time recollect.

What was done, in consequence, in order to get Mr. Tindal's resignation accepted?—I believe Mr. Tindal wrote to the board of Admiralty, to resign, and his resignation was accepted, and I was appointed; I know no other form; the form that was usual.

Did you make application to lord Sandwich to be appointed in his room?—I made application to lord Sandwich to be appointed in his room.

Was lord Sandwich made acquainted with that transaction between you and Mr. Tindal?—His lordship, I am sure, knew nothing of the transaction before it was finished and done with.

Did not lord Sandwich ask you, whether you had agreed or settled any thing with Mr. Tindal?—I do not recollect he did; I recollect his lordship had nothing to do with the transaction between Mr. Tindal and me, about that business, nor did he know the particulars of it; I was appointed in Mr. Tindal's room, when he wrote for leave of resignation.

Did not lord Sandwich ask you, what were Mr. Tindal's motives for asking to resign?—I really think he did not; but you are asking me to a thing that happened seven years ago.

But can you take upon you to say, that lord Sandwich did not ask you, what reason Mr. Tindal had for resigning?—No; I do not recollect that he asked me any such question.

Do you take upon you to say, that lord

Sandwich was not acquainted with there being some compensation made to Mr. Tindal?—There was no compensation made to Mr. Tindal.

I mean the agreement to pay him his salary during life?—Lord Sandwich, I believe, knew that Mr. Tindal and I were negotiating, but did not know the particulars of our agreement.

How did lord Sandwich know that?—I applied to lord Sandwich to know, if he would appoint me, in case Mr. Tindal and I agreed; I remember, now it comes to my recollection, that lord Sandwich told me, that there were two old chaplains; his lordship was so kind to say, he intended to do something for me, he told me, but he did not know exactly the place or time; that he intended giving me one of those, if they dropt, knowing they were old lives; that put me in mind of endeavouring to get at it by resignation.

To endeavour to get it by resignation?—Not get at it by resignation; but if I treated with Mr. Tindal and he resigned, that I should be appointed.

What did you imagine lord Sandwich understood, by your treating with Mr. Tindal?—I did not know what he understood by it.

Do you think lord Sandwich understood, that you were treating with Mr. Tindal, to give him some compensation?—The negotiation between us was not under the sanction of lord Sandwich at all.

I am asking you, whether it was with his privity or knowledge?—I believe I might have mentioned it to him at the time.

Was lord Sandwich made acquainted with your giving 50*l.* to Mr. Tindal, to resign being a director?—He never heard of it, nor ever knew of it; I do believe the first information his lordship has had of it, has been from me this very moment; I am sure his lordship never heard of it from me.

I should be glad to know, whether your coadjutor, the other chaplain in the Hospital, hath ever been at sea; whether he comes under the description of the original charter of that Hospital? Is Mr. Maule here?—He is.

Whether you know of any other of the directors who have given compensation for their places at that board?—I know of none; I did not look upon that as a compensation.

Whether a *douceur* or a present is usual, when a director resigns?—No; I believe it was never done before.

I wish to understand you correctly; I understand you are in the Hospital in two capacities, as a chaplain and as a director; 50*l.* was given as a *douceur*; that was not for the chaplainship; that I suppose would have been simony, it was for the directorship; but there was also an agreement, was there not, to do the duty, for a certain period of time, without any salary?—I told the House before, I took it upon those conditions; Mr. Tindal was to have the profits of the chaplainship.

during his life, and I was appointed chaplain, and I did the duty,

Without any part of the salary?—Without any part of the salary whatever of any kind.

Do the profits of the chaplain of Greenwich Hospital consist of any thing more than the salary? Are there any emoluments belonging to the office not comprehended in the salary?

—There are no emoluments belonging to the chaplainship, or any other office in Greenwich Hospital, of any kind, but the salary.

Then am I to understand you had no profit whatever during the time Mr. Tindal lived?—Not a sixpence.*

And you gave 50*l.* to Mr. Tindal for the resignation of the directorship?—That was a year, or a year and a quarter after.

Whence does the pay of the chaplain arise?—There is a salary of 100*l.* a year; he has table money, which every other officer has; which, I believe, is twenty pound odd. There are stores, the same quantities as a lieutenant has: that was the salary of the chaplainship, with apartments, at the time Mr. Tindal resigned to me.

Has not the chaplain some pay from the ordinary of Greenwich and of Woolwich?—No; that is paid into the Hospital.

Has there been any augmentation made to the salary since you have had it?—There has been an augmentation which the minutes of the general court will shew, and shew the reason of it; that was, I think, in March, 1775.

What was that reason?—If the House will be so kind, as to call for the minutes of the general court, Mr. Ibbetson is here, and will fully explain that.

But what do you understand to be the meaning of it?—The additional 30*l.* a year is for reading prayers at the infirmary, which the chaplains had never done before; and we had done the duty at the infirmary a year, before this addition to the salary was made. Another reason was, that all the salaries had been raised in the Hospital, since the great augmentation of the pensioners, the burials must of course increase; the captains and lieutenants of the Hospital were raised before our addition of salary.

What was the salary you paid Mr. Tindal?—What I mentioned at first, the 100*l.* a year, and the table money.

How much in the whole?—About 135*l.* a year, the salary; the table money and the stores are allowed, amount to about 135*l.* a year, at the outside, I believe; but I am sure 140*l.* is the extent.

That was what was before the augmentation?—Yes.

Are there any profits of any other kind?—None that I know of.

* The reverend man enjoyed a good apartment for himself and family, physician, surgeon, and apothecary gratis, beer without excise, and asses milk for his children; and all which he does not estimate at sixpence, upon his oath.—*Orig. Ed.*

Has not the lieutenant governor's salary been raised likewise?—The lieutenant governor's salary was raised 100*l.* a year more, in captain Baillie's predecessor's time.

Whether you ever knew of any instance, of the first chaplain of Greenwich Hospital not being a person qualified under the charter of the Hospital as a seaman?—Yes; Mr. Stubbs, the first chaplain, never was at sea in his life, and he was chaplain of Greenwich Hospital 35 years; he never was at sea in his life, or was what they call a naval chaplain.

Did you ever know of a steward who was a landman, before the present steward?—I have understood, that the first steward that was appointed to Greenwich Hospital, had never been at sea; I have understood, that Mr. Bell had not been at sea, when he was appointed to Greenwich Hospital, but that he afterwards went to sea. It is not clear that he had been at sea, when he was appointed steward to Greenwich Hospital.

Did you ever hear how long a time he was secretary to admiral sir John Norris?—No; he made application to the board, I believe, for permission to go with admiral Norris.

Can you prove he was not a regular qualified person, before he was chosen steward to Greenwich Hospital?—I should think, from the service he had done to the Hospital, that he was a very proper man for the office. I have never heard any thing of Mr. Bell but by hearsay; I did not know him.

You have heard he has been of infinite benefit to the Hospital?—He has been of infinite benefit to the Hospital.

Did you say he had not been at sea before he was appointed?—I have understood he had not.

Did you ever hear in the Hospital the year that Mr. Bell was appointed steward to Greenwich Hospital?—I have heard, but I cannot now recollect.

Is it as long back as 1736?—In 1735, or 1736, I think I have heard he was appointed.

[Reverend Mr. Cooke withdrew.]

Captain Chads called in, one of Lord Sandwich's witnesses.

Whether you are one of the council?—I am.

How long have you been so?—I have belonged to the Hospital above three years.

By whom were you appointed?—By the present board of Admiralty.

How many military officers are there?—Fourteen.

How many civil?—Six; but three of them never attend the council; the auditor never appeared at council yet; the secretary, his business leads him another way; and the physician always has business in the infirmary; that I believe is the occasion he cannot attend the council.*

* If captain Chads knows any thing about the infirmary, he must know that the physician seldom or never visits his patients oftener than once in eight days, and that not of a council day.—*Orig. Ed.*

Do they never attend?—I have seen the secretary and physician there about three times each; the auditor I never saw there.

Do the military attend their duty?—I think they do.

Are there generally more military than civil officers attending the council?—Sometimes treble, generally double the number.

Do you observe that the civil officers generally side together?—No, I never saw it.

Do you observe that they form any thing like a faction?—Quite the reverse; I have seen the military have done it, but never the civil.

Do you know of any attempts there to secure a majority?—Never, no attempts to secure a majority; only when captain Baillie's book first came forth into the Hospital, parties appeared there like mushrooms, who never appeared there before.

But is there such a majority?—Not that I know.

Do you know any complaints quashed improperly?—Not any.

Do you know of any redress being refused?—None at all.

Do you know of any undue influence or management of council?—No, far from it.

Or any cajoling by the civil people?—No; any man that would speak with me to that purpose, I should despise him.

You have talked with the pensioners there often?—I have, a vast number of old seamen that have sailed with me in the course of 20 years, that often have talked with me.

Have you ever been absent from the Hospital?—Never more than six weeks.

If there had been any grievance in the Hospital, must not you have known it?—Yes; and I never heard a word of it till captain Baillie's book came forth.

Has the government of the Hospital been well regulated in your judgment?—It has.

Are the pensioners satisfied with the government of the Hospital?—I have seen many of my old shipmates; I have said, my lads, how do you like being here? Sir, I am extremely happy here; I want for nothing; I have every thing I can wish for; and if I am not happy, it is my own fault.

Has captain Baillie's conduct at the council been proper and temperate?—I think not.

Has his conduct in the Hospital been in your opinion such, as tended to make the pensioners happy?—I think otherwise since the publication of that book; I thought every pensioner seemed to be inflamed, which I never thought before; and it made a division among the officers immediately.

Then you do not think it has tended to produce peace?—No, I think it has tended to produce the contrary.

Have the members of the council been sufficiently active in their duty?—I think so.

Has the manner in which captain Baillie proceeded been of a nature to conciliate or inflame the minds of the parties concerned?—In council, when we have met, and debated upon matters, if we did not coincide in opinion with captain Baillie, he was warm; and I always, from circumstances which appeared before me, gave my judgment and opinion to the best of my understanding; I never minded any body.

Do you know of any impropriety in the conduct of the rev. Mr. Cooke?—None at all; I look upon him to be a gentleman; he is a good husband and an indulgent father; we visit one another; I never saw any thing unbecoming the character of a gentleman.

Did you ever see Mr. Cooke behave improper to the lieutenant-governor at the council?—Never in my life.

Do you know that Mr. Cooke has ever attempted to use any improper influence over the council and members?—Not in the least. Any man that would offer to influence, I should despise him; I would never speak to him; I have sat at courts-martial upon life and death; I should be sorry to be thought an influenced man; captain Baillie has been very severe against me; he calls us a mock council, and all legal government is at an end; as an officer and a gentleman I could not brook it; I memorialled the lords of the Admiralty for redress; and disavowed the charge; captain Allwright, lieutenant Lefevre, and one or two more, they did not sign the memorial; therefore it appeared to me they avowed the charge; therefore I looked upon them gentlemen to be a party; for in a conversation one day with captain Allwright, I asked him, if he had ever seen the book; I told him, captain Baillie had thrown a great stigma, and it was a thing I could never brook; he said upon his honour he never saw it; I asked him, if he had seen it in manuscript; he said he had heard it read; that convinced me he was consulted in the book.

Upon the oath you have taken, as a member of Greenwich Hospital, do you think that captain Baillie's removal would contribute to the good government of the Hospital, and peace and welfare of the pensioners?—I am thoroughly convinced Greenwich Hospital will never be in harmony till he is removed; it is now in hot water, and will be so as long as he remains, if he is not removed; for he is now in his apartments; and he is always tampering with the pensioners, and has influenced their minds, which will never be eradicated for a number of years.

Cross-Examination.

Why did you sign the memorial against the lieutenant-governor?—Because he accused me falsely, by calling me a man that had secured a majority; an illegal council. I look upon the council to be the internal government of

* The council is held once a week at least; and captain Chads, during the last whole year, has been but thirteen times at the council.—Orig. Ed.

that Hospital; and therefore I, as a member of the same, would do the same, if the like case was to happen.

Whether there is any club of officers held in Greenwich Hospital?—Certainly there is.

Where is that held?—In the council room.

Was it held there the night preceding the fire?—I kept my bed; I was in the gout at that time; I cannot say to that particular time; but it is a very indifferent club for officers; it is only a sixpenny club.

Did lieutenant Kerr complain to you, as captain of the week, that there was a scene of drunkenness and riot in the tailors' shop, a week before the fire?—I do not recollect; if he did, I was not capable; I was in bed, in the gout; and the day the fire happened was the first day I got out; I got a great pair of cloth shoes on; I had been ill of the gout two or three months; I do not recollect that; he possibly might; he used to come in and tell me news, and have any little chit-chat; as I kept my apartments, likely he might.

Do you recollect whether he did, or not, send you a boatswain to inform you of it?—I do not recollect it; I ask pardon, I do now recollect he did send a boatswain to let me know there was some riot; I sent for the boatswain of the guard; I ordered him to go up there, and see the people were dispersed; the doors were shut; that was all I knew; I ordered him to carry directly any that were there and put them into the east-gate, which is the prison.

Then, by your account, you did not go yourself?—I observed I was ill of the gout; I could hardly walk.

Did you send lieutenant Kerr to quell that disturbance?—I believe not; because he sent the boatswain to me; but I perfectly recollect I sent for the boatswain of the guard, and told him what lieutenant Kerr had said to me; he returned, and said the door was shut, and every thing was peaceable and quiet.

Under whose care was that ward where the disturbance happened?—I look upon it it was close to the tailors' apartment; I look upon it to be in lieutenant Kerr's department.

The tailors' shop?—Those apartments are shut up every night, and under the care of the master tailor himself, because he had the clothes, and all those things there; I believe nobody paid any attention at all to the tailors' shop (that is, to take care of it) but the master tailor himself, whom I understand used to lock it up, as he had a great charge of things there. But the riot, I understand, was in the shop; the boatswain said they were all dispersed; had there been any body there they would have been brought before me.

Is the tailors' shop under the management of the officers of the Hospital, or not?—I never heard that talked about; nor did I ever hear any complaint about the tailors' shop, till lieutenant Kerr came and told me they were drunk in the tailors' shop. The tailor used to

take care of that particularly, because he had a charge there.

Are they under the steward's care?—I do not know that.

Are they under the care of the military?—I believe the whole Hospital is under the care of the military, in general; but, I believe, nobody ever visited that place of a night: the patrol visit every part of the Hospital; but could not visit that, because that was locked up every night.

Do you take upon you to say, of your own knowledge, whether that was locked up every night?—No, I will not say that.

Did you never hear that any body worked there by candle-light?—I never did.

As a military man, did you ever visit it?—I never did.

In the whole course of the time that you have been in the Hospital, and when you have been officer of the week, you never visited it?—Yes, when it is my tour of duty, I go into the Hospital to the dining room.

But never visited the tailors' shop?—No.

Did you ever send any body to visit it?—I never did; nor ever visited it myself.

Are there any sinecures in Greenwich Hospital?—Not that I know.

Does the barber do his duty?—The barber! The man that contracts?

No. The barber of the Hospital.—I know his name is Mackeness, by captain Baillie's book; but till that book came out, I did not know who was the barber.

Did you never hear of it otherwise?—Yes; I have heard people say Mackeness was the barber; and that he had been a servant of lord Anson's.

But does he do his duty?—That is done by the deputy, I believe.

Is not that a sinecure, then, as you think?—I think so.

Does the porter attend the council?—I cannot say I ever saw him; we have every boatswain attends; I cannot say I attend every council; I never saw him when I attended.

Does the clerk of the council attend his duty?—I never saw him; the steward's first clerk does that duty; and, as I understand, the clerk of the council never did any duty there; it was always a clerk from the steward, or a clerk of the cheque, that did the business there at the council.

Am I to understand you never saw the clerk of the council attend his duty there?—I never saw him in my life; therefore I never saw him there.

Does Skeene, the butler's mate, attend his duty?—I know he is an assistant with the clerk of the works; but I never was so minute as to enquire about the butler's business; I saw every thing go on very regular, and never had any complaints come to me.

But did you ever see him do his duty?—If you will please to acquaint me what his duty is.

Butler's mate.—I do not know what that is. And you are an officer in Greenwich Hospital?—Yes.

Do you know there is such an office?—I have heard them called butler's mate.

But do not know what that business is?—No.

Do not you know what the sculleryman's mate is?—I suppose to wash the dishes.

Is there one Russel, a sculleryman's mate?—I believe there is; but I never attended there; I have a deputy that attends to that business; if a lieutenant is not capable of that, he is capable of nothing; as a captain of a man of war, we trust our lieutenants.

Do you know one Dickey, the turncock?—Yes; I always see that man turning the water in and out, always doing his duty; a very civil obliging fellow; I have seen him in all parts of the Hospital with a great iron thing under his arm.

Is a disabled seaman capable of performing the office of cook in Greenwich Hospital?—No; not at all.

When you have been at sea on board a man of war, did you ever know any cooks that were disabled seamen?—Yes; I have seen them without legs or arms; but they had people to do their duty for them; I had one at sea with me that had never a hand, but he had always cook's mate and cook's shifter, as we call them: I look upon it a cook of Greenwich Hospital should be a good active man.

Do you imagine a seaman is capable of being a cook at Greenwich Hospital?—Some may, and some may not: I do not think every seaman is a cook.

But whether no seaman is a cook, is my question?—I believe there are many seamen cooks, and many that might do that business.

Who pays the deputy barber, do you imagine?—I cannot say; this is a matter that never comes before the military officers.

Did you never hear whom this barber that shaved the people was paid by?—I suppose the barber that has the business of the Hospital pays his deputy barbers.

I think you told us you had the misfortune to be a good deal afflicted with the gout; you have the misfortune to be so much troubled with that disorder, as to be frequently prevented attending the council?—Sometimes I have been prevented, and have been carried over in a chair.

Were you able to attend that particular council when the great complaints were made with regard to the brewing?—I was at the council then, and I believe that complaint came to me first as captain of the week; and I believe I sent them to the lieutenant-governor, and the lieutenant-governor sent them to me; but that was a piece of roguery of a man who drew the beer, which was detected afterwards, and he was expelled the Hospital. It was not the badness of the beer that came from the brew-house, but he had a way of adulterating the beer; it was proved

he sold the ale and small beer, and therefore he was expelled and turned out of the Hospital.

What was your own opinion upon that affair? What did you judge to be the truth of that affair?—I really could not tell how or which way the beer came bad; but Mr. Mylne, the clerk of the works, who is a very sensible clever fellow, he found it out, which I could not; I heard him say that the beer is adulterated at the sink where it was drawn, and it does not come from the brew-house; I could not have found it out, and he found it out, and we detected the man upon it.

When did that appear?—Last summer was a twelvemonth.

Was it soon after the time the beer was complained of that it was found out?—I believe it was soon after that, that he was detected, and brought to the council, and expelled the house, but I cannot exactly speak to time.

Am I to understand that you lay the whole mismanagement of the beer to this man, that was detected in adulterating it at the sink?—I do not know; as he was detected in that, I suppose it was.

You do suppose so?—I suppose so; but in hot weather brewings will be bad sometimes.

Are there two sinks, or one?—Two sinks.

Do you imagine that this man could be at both sinks at the same time?—I suppose not.

How do you account for its being adulterated then?—The beer was adulterated, and stole by a man whose name was Luke Davis; he was brought to the council, and it was made appear; so that it was the opinion of the council that he should be expelled the Hospital; and he was accordingly expelled.

I think you said you attributed the badness of the beer entirely to his adulterating of it; now, how could he adulterate it at both sinks?—That was a matter of opinion, that we thought so.

Upon what ground was that opinion formed, that a man at one sink would adulterate beer at another?—We detected the man; that is all I know; all I know since that man has been expelled, we have never had a drop of bad beer; I never drank a drop of finer beer in my life.

How far are those two sinks separate from each other?—I cannot say.

Are they in the same room?—I really do not recollect whether I ever saw more than one sink.

Are they not in different rooms?—I really cannot tell.

Are there not two dining halls?—There is.

Is there a sink in each hall?—Really, I cannot say as to that.

Do you recollect there being a great number of gallons of beer started in the cellar?—I do not recollect any such thing; I have heard of it, but that was before my coming into the Hospital.

Could that have been owing to this man

that adulterated the beer at the sinks?—Undoubtedly not; that beer was sour, as I understand.

Whether you look upon it as necessary to have a landman, and whether a seaman cannot answer the purpose as well as a landman, of brewing the beer?—I do not know; I never knew a sailor a brewer in my life, except brewing spruce beer at Newfoundland; when I was a captain there, I brewed beer myself then, the common spruce beer.

Do you know that both in the sea and in the navy, there is a variety of people who have been bred up to every trade?—Certainly; there are all trades.

Are there not cabinet-makers and joiners, which are trades more mysterious? Are there not carpenters and every other trade to be thought of within that numerous body, may there not be met with a seaman that brews beer?—There are all trades and occupations belonging to a man of war; I have met with all trades there almost, except a brewer; carpenters, joiners, jewellers, silversmiths, chimney-sweepers, and all trades, except a brewer; there might be brewers on board a man of war; but, as we don't employ them in the way of brewing on board a ship, I do not recollect any.

What is that great mystery of brewing; as you have met with all trades and occupations in the navy, why not meet with a brewer?—I will tell your lordships why I never met with any; there might be brewers in men of war, as well as other trades; but we never employed a brewer on board a man of war; had we brewed there, we might have met with brewers, as we found out other trades, by employing carpenters, and such people.

If you were to take a seaman, as you have all other trades; if you were to take a seaman on shore, and employ him in the great mystery (for so it seems to be) of brewing, do not you think you could find a man that could have brewed?—Undoubtedly; I do not think there is any great art in brewing; I brewed spruce beer; I found no great difficulty in that; I never brewed malt beer in my life.

Viscount *Dudley*. I ask, to your knowledge and belief, whether the present first lord of the Admiralty is every way as much approved of in that office as his predecessor*, lord *Hawke*? [Captain *Chadds* withdrew.]

Thursday, May 27, 1779.

Captain *Chadds* called, one of Lord *Sandwich*'s witnesses.

Duke of *Bolton*. Whom did you succeed in Greenwich Hospital?—Captain *Lynn*.

* This question, put by lord *Dudley*, the friend of lord *Sandwich*, to captain *Chadds*, who had been but a short time in the Hospital, and on whom a favour had been just conferred by the first lord of the Admiralty, rousing the opposition, and occasioning some debates on account of the impropriety of the comparison, was withdrawn by the noble lord. *Orig. Ed.*

Upon what vacancy did you come in?—Upon the vacancy of captain *Cooke*, who is the circumnavigator, gone round the world.

Did you come in upon any proviso, that if captain *Cooke* returned, you must resign your place in the Hospital?—Yes; I had that offer made me; I quitted my ship two or three times, not being able to serve.

Whether captain *Baillie*'s removal has not established you in the Hospital?—His removal made me third captain.

Therefore you got rid of that proviso?—If there had been no vacancy when captain *Cooke* returned, I was to go out.

[Captain *Chadds* withdrew.]

Lieutenant *Besson*, another of Lord *Sandwich*'s witnesses.

Are you of the council?—I am.

How long have you been of the council?—Ever since I belonged to the Hospital, which is above 20 years; as an officer, of course I became one of the council, the moment I was appointed, as one of the naval officers.

Do the military officers attend their duty?—Yes.

Do the civil officers attend their duty?—I believe they do.

Are there generally more military or civil officers attending?—In general more military.

Have you observed that the civil officers form a faction?—Not in the least that I know of.

Do you know of any attempts in them to secure a majority?—I am entirely ignorant of that.

Is any such majority secured?—Not that I know of.

Do you know of any complaints being quashed improperly?—None.

Do you know of any redress being refused?—Not any that I know of.

Do you know of any cajole with the pensioners?—I don't understand what that is.

Have you been often absent from the Hospital?—Not six months, put it all together, for above 20 years.

If there had been any grievance, must you have known it?—Certainly I should have heard of it.

Has the government of that Hospital been well regulated?—If your lordships will give me leave to answer fully what I know, connectedly with this question, I shall be glad to be indulged.

You may go on.—In captain *Baillie*'s printed book, upon your lordships' table, among many other charges, there is a stigma thrown upon the council of Greenwich Hospital collectively; I have no concern with any of the charges against individuals, it is that against the council that affects me; and I should look upon myself exceedingly injured, if I had not an opportunity of explaining that matter. If captain *Baillie* knew of any grievances, that injured the pensioners, he must know that it was his indispensable duty to have laid those grievances before the council, that being the proper channel previous to any other. For

above 20 years past, and I have attended the council as often as any officer of my station, in the council, I never knew of any single complaint coming before the council, complaining of the quantity or quality of provision, clothing, or any thing allowed the pensioners by the establishment, but that if the complaint appeared a just one, every officer present was as ready as captain Baillie could be to redress it, if they had it in their power; if they had it not in their power, they never failed to lay it before the board of directors; if there was any grievance of any sort, the council should have been acquainted with it; I don't recollect that ever captain Baillie met with any opposition, wherein the pensioners' welfare was concerned. Now the good government and regularity of the pensioners, and the protection of them, is intrusted to the council. Captain Baillie has met with some little opposition in other things, but totally different from what is mentioned in the book; this I will maintain, with regard to the good government of the Hospital; there are every week complaints of pensioners and nurses, against one another, for neglect of duty, pilfering and pawning the things under their charge; these are punished by mulct, by fines, or as the council shall think right. As to mulcting a man, three weeks instead of a fortnight or so, we are not always unanimous in that; but I should never have an idea, that a gentleman would make an opposition against another, where a poor pensioner is to be mulct; I never knew of any opposition where a poor pensioner was injured.

There is another thing, and captain Baillie, if he is present, hears me, and he was once of the same opinion as myself; since I have been in the Hospital, there have been six different lords of the Admiralty; I don't presume to give the least distant hint, upon any consideration, what the first lord of the Admiralty should do, relative to Greenwich Hospital, I only speak to the fact, what I know myself. I have attended the present first lord of the Admiralty, in different wards; I have attended him in the dining hall; he has examined the pensioners' lodging, diet, cloathing, and every thing of that sort; we all looked upon it he came on purpose to redress grievances, if there had been any existing; that I conceive to have been the time for complaint, if any existed. I have been told, that this book was in hand before this; I will not take upon me to say that it was, but I never heard any complaints at that time. I do declare, as I am here upon my oath (as much has been said of party and faction, and civil influence, from views of interest, and intimidations being made use of, to make a party against captain Baillie) I declare, I never received a single favour from the first lord of the Admiralty, nor do I ever expect any. I never had a private quarrel with captain Baillie in my life, and I have known him 17 years; what I have done has not been

from any private prejudice whatever, it has been in justice to the council, and to the society I live in; I have no prejudice, of any sort, privately against captain Baillie.

Are the pensioners happy, and satisfied with their situation?—There are discontented men in all societies, but they have no reason to be otherwise than happy; I don't know any of them that are not happy.

Has captain Baillie's behaviour, at the council, been proper and temperate?—When first he was made lieutenant-governor, I thought he had a capacity, and manner, and address, that would have done honour to his station; but as I am called upon to answer the question, I must say, there is a little heat and overbearingness in his temper; it is a constitutional discontented mind, I am afraid, from jealousy and suspicion, and little private prejudices made the captain forget himself, with regard to being warm, and little altercations have happened, I believe, on that account; but in every other respect, in private, he has always behaved to me as a gentleman in every respect, but at council there have been heats; I have never had words with him myself, but I have seen it in others.

Do you think that his conduct has been such, as tended to make the pensioners happy?—If the happiness of the pensioners depended upon their being satisfied with every thing, they ought to be satisfied with, there certainly have been steps taken to prevent that; so far I cannot say that they are happy.

Have the members of the council been sufficiently active in their duty?—I never knew to the contrary, particularly where it appeared that the pensioner was any ways injured in any thing that was allowed him by the establishment; captain Baillie, to my knowledge, never met with any opposition at council.

Has the manner in which captain Baillie proceeded, been of a nature to conciliate or inflame the minds of the parties concerned?—Before the book was published, we were entirely ignorant of the charges against us, for we did not know of a single one, till they went as a complaint against us to the lords of the Admiralty; since the book is published, I believe the pensioners have a notion, that captain Baillie is the only man in the Hospital who is their friend, of course the rest are too bad to name, from the notion that nobody will do justice to them but captain Baillie.

Do you mean that captain Baillie's conduct in general, has been of a nature to conciliate or inflame, with regard to both pensioners and council, and every body that might be concerned?—The house, from the publication of this book, has been in a confusion that it was not before; and I must say further, (I hope I shall not be looked upon to be prejudiced, for really I am not no more than speaking the truth) since captain Baillie has been made lieutenant governor of Greenwich Hospital, there has not been that peace, hap-

pineness and tranquillity in the Hospital that there was before.

Why did you sign the Memorial against the lieutenant governor?—When captain Baillie's book was carried to the first lord of the Admiralty, the title of it we heard, but did not know the contents; the particulars, the officers wished much to see it, at last we got a sight of it; I read it over, but that part which throws a stigma upon the council, I perused very attentively; I judged for myself, and I believe the others did the same; those officers, who were conscious of having acted with integrity, met captain Baillie at a full council with his book, and there, face to face, had those parts read, which reflected upon the council; at the same time we had a Memorial drawn up, to present to the lords of the Admiralty, disavowing the charge, and praying their lordships to order an enquiry, that justice might be done us; we considered, that if captain Baillie had attacked any of us in our private characters, a private satisfaction might have sufficed; but in our public capacity, we thought the Admiralty the only place to look up to for redress, that is my reason for signing the first memorial; captain Baillie was considerably agitated at the time, he endeavoured to prevail with some of the officers not to sign it; I believe he did prevail with some not to sign it. A captain, who I believe is present, and hears me, and he has deposed at your lordships' bar to the same purport, that he was very much surprised, that the lieutenant governor should be attacked in that manner; he thought it unfair to attack him to his face in that manner; my answer was, that I thought it more manly to attack a man to his face, than behind his back; captain Baillie had presented complaints against us to the Admiralty, without our knowing what they were till after they were published, that was the reason for what we did; we signed it there; we had it read over to him; I thought that was doing it much fairer, than doing it behind his back.

Have you any such thing as a pillory in the Hospital at Greenwich?—I omitted, among other things, to tell your lordships, that as well as the yellow coat, there is what they call the elevated place, it is in a conspicuous part of the hall, raised about the height of the bottom of a chair, that the pensioners may all, while they are at dinner, see who is there, and what they are for, it is no more like a pillory than what a chair is; there is a rail they may lean upon, those that are infirm, if they please; there was a witness that was lately called to your lordships' bar, who deposed, about refusing to be put in the pillory.

You are not to mention what he deposed; you don't know of any such place as is called a pillory, do you?—I never heard of the term till mentioned at your lordships' bar.

That has none of the properties of a pillory, has it?—No; it is just as I stand here,

there is a little bar to clap their hands on, to support themselves to stand upright, nothing more.

Cross-Examined by the Duke of Richmond.

Where are you lodged in the Hospital?—I am lodged (unfortunately for me with one leg) at the top of the house, where I have been ever since I first came to the Hospital.

Have there been any additions made to your apartments since you came*?—There have been a few, and if there had been more there would not have been too much.

Have there been any rooms for your apartment made in the roof of the building?—There has been a room for a servant; I had no convenience to lodge a servant in the place I had below; it is so damp they were laid up every winter with the rheumatism.

Have you had one or two rooms made?—One room only.

Nothing more?—I have a little slip I can just stow my clothes in, which cannot be called a room, it is just a slight partition to separate it; I might have laid it in one.

There are two rooms of some sort or other, whether great or small?—There is but one taken out of the roof, the other is over my kitchen.

That which is over the kitchen is not in the roof?—No; one is made from the roof, the other out of the kitchen; it is at the top of the kitchen which joins to the roof; it is a sky-light affair.

Is there a fire-place in one of them?—There is, but being a servant's room, it has never had a fire in it, nor I never intend there should, except when they are ill.

Has not the original kitchen belonging to your apartment been made into a bed-chamber?—It has.

Have you had a bed-chamber made into a kitchen?—The kitchen was converted into a bed-chamber, and bed-chamber into a kitchen, being much safer than having it up so near the apartments.

Does the drain of that kitchen run through three of the men's cabins?—It runs through a corner of a cabin in one ward, and may go down, I believe, through one cabin more at the bottom; I cannot answer to that, I would not answer to what I do not perfectly know†; I think it goes at the first cabin, not through it, and at the bottom of all, it goes through one of the men's cabins.

Did it not run under one of the men's beds?—The back of the bed.

Does it not run through the nurses' closet?—It does run through the nurses' closet.

Is it not in an open gutter in the nurses' ward?—No; it is a gutter, but there is a close wooden cover to it.

* This favour was granted by lord Sandwich, besides an addition to his pay. *Orig. Ed.*

† This drain is in lieutenant Benson's division. *Orig. Ed.*

Is it leaded down, or nailed down?—The gutter is leaded, and the cover is fixed down close upon the top of it.

So as to prevent any stench coming from it?—Whenever there is any stench, it is always removed immediately from that part, by sending to the office to have it cleaned out; I never heard of any complaints of it, that were not immediately redressed and put to rights.

Does it go through the Cumberland, the Royal George, and the Jennings wards?—I believe it may, I am not positive.

Was not that stench so considerable as to occasion a stink trap to be placed under one man's bed, in the Jennings ward?—Yes; there was, and not only there, but in the very apartments belonging to the officers, there are some of those things.

Is it not looked upon yet as a nuisance to the inhabitants of those wards?—I don't hear the men complain, I go through often; I have repeatedly said, whenever you find any disagreeable smells occasioned by this, send to the office immediately; the office will put it to rights directly, and remove this nuisance; so that, if it ever happens, it is their own fault if they don't apply to have it remedied.

How often is that stink trap to be emptied?—I believe it may be, in the summer time, once a month, or once in two months.

And how often have there been any applications about it?—We do not always know when the applications are, because the boat-swain of the ward has a general order, whenever it appears the least of a nuisance to the ward, to send to the office; they immediately send, and then it is cleansed out directly.

Have you had any part of the public passage leading to your apartment inclosed?—I have. I will tell your lordships how that happened; when my apartments were last painted, which was I believe eight years ago, I was absent for a month or six weeks; and the late governor of Greenwich Hospital, sir George Rodney, without my knowledge, took upon him to desire the board to do it; that was, I believe, in consequence of telling him that I had my cupboard robbed, which is on the outside; it was all open before; he said, you shall have it inclosed. There are no pensioners have any business up that passage, it is the officers who have the key to go into the wards; but the pensioners go up another way, they have stair-cases of their own.

How much of that public passage have you enclosed?—I cannot really say how many feet it is, I never measured it; there are a couple of windows taken in.

Was Mr. Ibbetson instrumental in getting any of those accommodations for you?—Not that I know of: I will answer that question as far as I know; I was mentioning to your lordships before, a dark room which I had for my servant to lie in, it was exceeding damp, the wet used to run down in the winter, this joined close to Mr. Ibbetson's; by open-

ing a communication to Mr. Ibbetson's, it would have more air, and the next room to it having a fire would prevent this; I said you have applied to have an addition to your apartments; there is no objection to it, provided it did not infringe upon the wards; for the first lord of the Admiralty had said, he had no objection to that, if the pensioners' wards were not infringed on; I said, if you can get me a little room made, I will give this up to you; I said, I had no objection, but I should be very glad to give it all up if I could get a ground floor; for after 20 years I found that apartment very inconvenient.

You said, you think that you complained of captain Baillie concerning the printed Case of Greenwich Hospital?—No: captain Baillie complained of us; we disavowed the charge, knowing ourselves to be innocent of it; I don't call that complaining against him.

Was it not stiled a complaint in the wording of it?—I believe not; it was in answer to the charge.

Was that answer to the charge an act of council?—We met captain Baillie at a full council, some of the officers there were for complaining; some of the officers that he might have prevailed on, would not sign; captain Baillie got up and left the chair; there was no president; then we could undoubtedly have insisted upon putting another in the chair; we thought it a thing not to debate about, for it was no matter whether it was an act of council, or of the officers belonging to the council.

Was it an act of council, or not?—Not of the council, I believe.

What complaint did captain Baillie make of the council?—The stigma thrown on the council was (I don't recollect the words, but it was to this purport) that civil interest made a factious party among the officers to oppose him at council, by which means it frustrated his most zealous endeavours to serve the pensioners, and that there was no legal government in Greenwich Hospital; we know that to be a gross misrepresentation, and for that reason we signed the Memorial.

What do you understand captain Baillie meant by no legal government in Greenwich Hospital?—The good government and regularity of the Hospital is intrusted to the council, and his saying there was no legal government of the Hospital was a reflection upon the council.

Are you sure he meant the council by that?—I only speak it as the matter struck me.

Did you ask him whether he meant the council?—The first day of the enquiry I met him, he said to me, I have nothing to say against you, you are a naval officer; I remember that; but when I came to see this, I saw it must be a very odd affair to be deceived in that manner, when he says there is no legal government in Greenwich Hospital, and a factious party among the officers. Now fourteen military officers must have a

majority over five or six civil, and therefore must prevail, unless the military act a rascally part to deceive the Hospital; if he had said who they were, and not mentioned my name, I would never have signed any thing against him. If captain Baillie had any thing, and brought it to council, where the pensioners were injured, I would have been one of the first that would have joined him.

Captain Baillie said he had no complaint against you?—As a naval officer, he said; this might have been told every one separate; but I don't say that it was so.

But he did not say he had no complaint against you?—When he came up to my apartment, which was to examine a little trifling addition, which if your lordships were to see, I am sure you would think trifling indeed; when I was going to explain to part of the committee what was done, he said, Mr. Besson, I have nothing to say to you, you are a naval officer.

Then captain Baillie did say he had no complaint against you, you being a naval officer?—He did.

I think you said captain Baillie had complained against you, and yours was an answer to that complaint?—These are charges against individuals, which I told your lordships I had no concern with; here is no charge against the council collectively; I, as one of them, joined with those officers, who, conscious of having acted with integrity, we disavowed jointly; we could not go separately; I own, I could not with any degree of temper read it.

Q. I desire the short-hand writer will refer back to an answer the witness gave, where he said that the happiness of the pensioners depended upon their being satisfied with every thing, &c.

Mr. Gurney read from his short-hand notes the question and answer as followeth:

“Q. Do you think that his (captain Baillie's) conduct has been such as to make the pensioners happy?—A. If the happiness of the pensioners depended upon their being satisfied with every thing they ought to be satisfied with, there certainly have been steps taken to prevent that: so far I cannot say they are happy.”

What do you mean by steps taken to prevent their happiness?—What I conceive of it is this; that by publishing this book, and repeating many things that have been settled before, as to bull beef, and sour small beer, I am sure your lordships have heard so much of it, you must be tired with it. That matter was settled, and every step taken that could be taken; and we thought there was an end of that, when this was revived again in the book, and in such a manner, that strangers and pensioners coming in every day, they must look upon it, that they must eat bull beef, and sour small beer; that it would be continued, and that captain Baillie was the

only honest man, the only man of integrity that was capable to judge properly for them; and that by frustrating him, they must be injured. This I conceive of the matter, that that did a great deal of injury; for I do not know a single officer belonging to the council, but what would always be as ready to do justice to the pensioners, as captain Baillie himself, though not to endeavour to make themselves popular; for no man has a right to arrogate popularity to himself, at the expence of the council; and this was representing, that the whole body of officers were set against him, and if they succeeded, the pensioners should live upon bull beef, and sour small beer for ever after. This is my idea of it.

Be so good as to point out that part of captain Baillie's book, where it says that, or any thing like it; that the pensioners are to expect, that they are to continue to be so treated?—Not literally, but I think it points it out very strong.

Can you point out any one word, or syllable, in captain Baillie's book, that insinuates, that the above abuses of the sour beer, and of the bull beef, were ever to be continued?—Not literally so; I am only telling your lordships, with regard to the pensioners, their idea when they come in. What is the matter? why, such a matter is now in agitation, and so and so; captain Baillie is our friend, and we should live upon bull beef, and drink sour small beer, if it was not for him. He is our friend, and is doing all in his power to redress us; and here are a body of men opposing him, and frustrating every good attempt for us, that he is trying at. Perhaps these men never read the book, but from hearing that the book has been productive of this.

You were asked, if captain Baillie had done any thing that should cause discontent?—Not of himself; I should suppose he would have prudence enough not publicly. Indeed, I don't insinuate from my own knowledge, that he ever tampered with the pensioners, or told them so.

Then, what you say, amounts to this: that the pensioners think captain Baillie their only friend?—Some of them may, from the motives I mentioned, not from any motives of justice; but they have been misled, and made to believe that, one among another.

I understood you, that since the book has been published, the pensioners have a notion, that they have no friend but captain Baillie in the Hospital?—Some of them.

You did not before restrict it to some?—I meant in general.

In general, have they that opinion?—I am persuaded they have not at present, though they might some little time ago; as, for instance, at the door of the House of Lords, the mutinous riot that was assembled there.

A mutinous riot did you call it?—We look upon it so in the military way, when a body of men assemble without an order of their officers. When the deputy usher of the black

rod, Mr. Quarre, came into the coffee-room, he said, what are your men assembled here for; I said, I don't know; he said, they obstruct the lords coming to the House; I said, if I had an order to ask them that question, I would go; captain Maplesden, and several others said, I wish you would; I went out, I did not choose to expose the authority of Greenwich Hospital, to call out publicly to the men to disperse, for fear they should refuse me; I called three or four of the boatswains to me: Who ordered you here? Nobody: Then why do you assemble in this manner? They could not tell; I said, if you have no other reason, I desire you to disperse; go and tell the men they have no business to form in that regular manner, as if they were coming to besiege the door of the House of Lords. They went away, they paid no attention to what I said; I returned; I thought the men would certainly have done as I desired them; they did not, they remained there afterwards. Lieutenant-governor Maplesden went out himself, when he heard a huzzaing; he waved his cane, as we do sometimes to those to tell them to disperse; I believe your lordships have heard before the result of that, from the minutes of the council, they were very insolent and mutinous. One went up to him in a daring manner, called him an old scoundrel, and said they would do as they pleased. The matter came before the council; we were as tender as possible, because we thought much would be made of it. Those that disobeyed my orders, were mulcted only half a crown,* and the man who flourished his cane over the lieutenant-governor's head was reduced to a private man.

Do you look upon it mutinying to disobey your advice?—When a body of men are assembled, and their officers desires them to depart, disobeying orders is mutiny.

Did you think you had any command over a pensioner of Greenwich Hospital at the door of the House of Lords?—In all parts of the town; if I see them drunk I take notice of them.

I asked you if you have any authority over the pensioners at the door of the House of Lords?—I thought, out of respect to your lordships, that it was a reflection to the officers, seeing them there; they might behave insolently to your lordships.

Do you think you have any authority over the pensioners of Greenwich Hospital, when out of the Hospital, and at the door of the House of Lords?—I distinguished that particularly: you that are summoned by the House of Lords are to stay here, but you who are not summoned are to go about your business; that I particularly took notice of; I would not presume to send away any person that was ordered to attend your lordships; they have an equal right with myself; but

many of the men assembled in that manner, we could not tell for what reason.

And because you could not tell for what reason, therefore you deemed it mutinous?—I told the boatswains to go to them.

With your advice, not your commands?—With my advice, and that they should answer at their peril, if they did not.

You have said, that these were, in the first place, people that were not summoned to attend the House?—Very few of them were summoned; I believe the boatswain who shook the cane over the lieutenant-governor's head, and called him an old scoundrel, I believe he was.

Did you see him do that?—I saw him flourish his cane over his head, but I did not hear him make use of those words; there were men appeared at the council, that declared they did hear him.

What was Glass turned out for?—For behaving insolent to the officer of the week; he was neither a boatswain, nor a boatswain's mate, he was rated as a boatswain's mate, and had a boatswain mate's lace for shewing the Painted-hall; he behaved insolent to the lieutenant of the week, lieutenant Fortye, the junior lieutenant of the Hospital. Many of the town's people, ladies and gentlemen, were very much surprised; I did not see the insolent behaviour, he behaved decently to me, when I came in afterwards, and appeared at council afterwards. He behaved insolent to the second chaplain, the reverend Mr. Maule, for which he was ordered not to attend at the Painted-hall any more, and was to ask pardon in this elevated place, publicly, that all the pensioners might see him, and hear that he asked pardon for the insult shewn to the officers; he said he would not; I myself said, "be persuaded, you will be your own enemy in this, if you refuse complying with the council's sentence; you know the result of that, you must be expelled the Hospital." It is a general rule with us, they certainly are, or there would be refusals every day. We desired him to go out and consider of it; he went out, and came in a second time, and I believe he went out and came in a third time; still he persisted that he would not ask pardon; so he expelled himself the Hospital.

What is this elevated place, as you call it? Is it a greater disgrace to stand there, than to ask pardon in any other place?—I don't know that there can be any disgrace in it, any more than it is more conspicuous; all the men see them there; and perhaps they would wish for but very few of them to see them ask pardon.

Have not you different degrees of punishment in the Hospital?—Mulct; confinement; suspension; expulsion. We can keep them on a diet of bread and water, when incorrigible; and expulsion is the last.

Don't you make them ask pardon for faults sometimes?—We do.

Is it always in that place that you make them ask pardon?—Sometimes. When it

* The men are allowed 1s. a week. *Orig. Edit.*

happens in the ward, we make them ask pardon of the parties at the council, and go up into that ward where the insult was given, and ask pardon there; but in the Painted-hall, where the insult was given, it was, for example sake, that he was ordered to ask pardon in the elevated place.

Is it looked upon as additional punishment?—It is looked upon more than asking pardon in the council-room.

You say captain Baillie has been sometimes very warm; can you give any instance in which he has been very warm at the council?—Your lordships have been told at your bar, that the civil officers begin first with giving their votes, by which means they are called the leaders, and the rest follow them. Now, I believe, in all courts-martial, the junior officers begin first; it would be absurd for the senior to begin; he might influence the junior. The junior begins first; but it does not follow, that I follow his opinion, because I happen to coincide with his opinion. Captain Baillie, as president, should reserve his opinion till the last; he may examine, but he should not give his opinion first; he should give others leave to do it; which he generally did not; but he too often gave his own opinion first; by which means, when any of the juniors were giving their opinion, he endeavoured to argue with them, and to convince them that his way of thinking was better; by which means the business frequently was stopped; and it might lead sometimes to a very great warmth. I should be sorry to take up much of your lordships' time; but in a very few words (as every lord here would wish to know the real grievances of Greenwich Hospital) I can tell your lordships the real grievances of Greenwich Hospital, if you will please to hear them.

Go on.—Captain Baillie hears me now; and I would wish rather he was present to hear me, than otherwise. The real grievances in Greenwich Hospital have originated with captain Baillie's private quarrels with some of the civil officers, which made him too often blend private resentment with public duty; and when an officer differed in opinion from him, he was construed part of the faction of civil influence; and, in short, every thing that was bad; now it is modestly saying that he was the only honest man of sense, capable of judging, amongst us all; and that we must be knaves or fools to be biassed by others, to the injury of the Hospital.

Do you know of any other instances, than what you have mentioned, of captain Baillie's warmth? I think the instance which you have mentioned is, that captain Baillie has argued with the junior officers, who were to give their opinion first.—To enter into particulars, that would be a repetition; for at many councils there has been too great a warmth, and has brought on disagreeable debates of arguments; but never when any appeared, where the pensioners were injured,

he never met with any opposition; we were unanimous in that; I only speak of trifling things.

As you have cast a general reflection upon captain Baillie, to say he was very warm in the council, and the grievances of Greenwich Hospital have proceeded from his having private quarrels with other particular persons, it would be doing him justice to mention what those particulars are.—There were two or three of the civil officers that he had private quarrels with; and I never saw, before those private quarrels were, but that every thing went very quietly; but from the opposition to those particular people, that gave me reason to think that was the ground of it.

I beg to know the date of those quarrels?—Some years past; it was before and after captain Baillie was lieutenant-governor.

Then if it has been before captain Baillie was lieutenant-governor, I don't understand you?—He might not have it in his power to shew those private quarrels, till after he came to be lieutenant-governor; I am only speaking of what I know, with regard to those private quarrels; I believe this; I don't say it is fact; but I have made that observation; and I think that is the grounds of the grievances of Greenwich Hospital.

I beg you will mention any other instance of captain Baillie's warmth in council; you have only mentioned one.—He never had any with me. The duty of a naval officer in Greenwich Hospital is principally the good government of the pensioners, and their protection. A naval officer has no business to go into the office of a civil officer. I suppose every man of trust will act like an honest man. If the pensioners come with complaints, you will attend to them; but are not to go to search into things, and suspect people of frauds without grounds.

Do you know any instances of captain Baillie's searching for frauds, without having them complained of?—I was in the Hospital many years after Mr. Bell,* who was in the Hospital above forty years; no military officer ever presumed to go into the kitchen; it was his indispensable duty to receive the meat, see it cut up, and delivered to the cook, who locks it up. The naval officer is to go into the dining-hall when the bell rings, and the men are assembled; if the meat appears improper, then I am to take notice of it; I am not to go into the kitchen, and see if the civil officer does his duty, and suspect him to be a rascal: no; if he, the civil officer, has any doubt, he sends for the officer of the week to go in and assist him; it is not my duty to go there without; and every man of integrity would be hurt by it very much; I should think it very wrong, and resent it, if a civil officer came into the dining room to see if things were right.

Then one of the great grounds against cap-

* A former good steward. Orig. Ed.

tain Baillie is, he has been very officious in looking into the meat?—I was asked what grounds I had for supposing quarrels with the civil officers the grounds of it; I mentioned this as what I thought the ground; he encourages others to go and see whether this or that man is a rascal or not; which I should not think he would do, unless he had a quarrel with them.

Then it has been his inspecting into things, to see if there were any frauds or not?—In an improper manner.

What do you call an improper manner?—It is an improper manner for me to go into any man's office, who has a trust, to see whether he acts properly or no, when I have no business so to do.

Then you don't think it is the duty of the lieutenant-governor to see whether the officers in the Hospital do their duty?—Every officer of the Hospital is to take notice of every fraud that he knows of; then they are to be brought before the council; they are not to be made private memorandums of at home, but to be brought to the light, and rectified immediately.

I understand you, that the cause of quarrel between captain Baillie and the civil officers of the Hospital was, that captain Baillie had enquired, in an improper way, into the meat?—Not particularly that; but, in general, his private quarrels with some of the civil officers, I believed, was the general cause of the disturbances in Greenwich Hospital.

I desired an instance, and did not you mention that he had particularly examined, in an improper manner, into the meat?—Yes.

Give an instance of that.—I have known a captain or lieutenant of the week go into the kitchen when the meat has come in, examine the meat, and, before the civil officer has determined one way or other, 'That meat is not proper; I desire that meat may be sent away.' He might have gone in and looked at it, but not have given any orders; he had no right to give any orders about it; it is the civil officer's duty to take notice of that; and if he found he did not report it, then take notice of him; but not before he found what his report should be.

Then the cause of this is, that captain Baillie has expressed himself, that the meat was bad, when he saw it such?—They have no right to examine the meat before it is boiled; not a naval officer, without he is called in by the steward and the clerk of the cheque.

That is your opinion?—We are directed, by the king's commission, not to interfere with any thing, only the government of the Hospital.

And you don't reckon it a part of the good government of the Hospital, to see whether the meat is good or bad?—Certainly, when it comes into the hall.

It seems captain Baillie has been too officious in enquiring into this matter?—Not merely that.

What then?—What have I charged him with?

I can't find that out; tell the committee what you do charge him with.—With being very passionate and overbearing in council; and with interfering in the private officers' duty in points he had no right to do; such as officers going into the kitchen, who had no right to go in there, to examine the meat before it was boiled.†

Do you know of any instance in which captain Baillie has behaved ill to the pensioners?—In what respect does your lordship mean?

I ask if you know any?—I think by causing a confusion and disturbance in the Hospital, and setting them by the ears together; and making the men, in general, believe they have been fed upon bull beef, and that it would be continued so; and that there were frauds continually exhibited against them: this is inflaming their minds, keeping them in hot water, and making them unhappy.

These are general charges: give an instance.—When the committee was sitting, he came out from the committee board; the words I cannot recollect; but they were repeated loud enough for any body to hear; that the lame and the blind (I beg your lordships' pardon, he made use of an oath) that there would be no redress for them. This is making a very bad impression upon the minds of the pensioners, and must make them very unhappy to think that they should have no redress.

That was in consequence of the examination?—It was, I believe.

Were you present at that examination?—I was not at that time; I was called when the council was called before the board; I was one of them.

Was this addressed to the lame and the blind only, or in general to the pensioners?—In general, in coming out; but I must beg to observe to your lordships, I did not hear it myself.

Can you speak to any other act in which captain Baillie has ever told the pensioners that they must expect to be fed with bull beef and sour small beer?—I don't know of any.

Do you know any instance of his having done any injury to the pensioners?—I do not.

Do you know any instance of his having struck a pensioner?—No.

Do you know any instance of any other officer having struck a pensioner?—Not of my own knowledge; there is little of that in Greenwich Hospital; in the course of twenty years I don't think it has happened twice.

Did you ever know captain Baillie in liquor?—Never.

Has he constantly attended since he has been lieutenant-governor?—Constantly: I

† After it is boiled, there can be no redress for the men, be it ever so bad. *Orig. Ed.*

believe as much so as any lieutenant-governor.

. Has he made it his business to take care of the pensioners?—Not more than other officers; he can do nothing of himself; it is the council.

Has he done any thing to injure the pensioners?—Nothing more than the impression that has been made upon their minds; I don't contradict that.

Is he looked upon by the pensioners as their friend?—I believe that he has been lately, since the book has been published, looked upon to be particularly so, because he has risked his all, I believe, for their sake.

The opinion of the pensioners, in general, is, that he has been their friend?—I cannot say in general; I do not converse with the men; only when we come to council we hear them.

I ask as to the general opinion?—I don't know as to that.

Do you know of any one instance in which captain Baillie has ever misbehaved to any pensioner?—I don't know, with respect to any single pensioner: I only know the general impressions made upon the pensioners.

Viscount *Dudley*. You mentioned a drain that runs under your apartments; was not there an old drain that ran under your apartment, and some of the cabins belonging to the pensioners, before you came into that office you are now in?—A. The same drain remains now; it is a water drain, it conveys the water from the top of the house, it is a large barrel, and this drain is let into that; that is the thing, it has not been a new drain, or a new barrel.

Duke of *Bolton*. Whether the officers have not all of them a set of instructions relative to their conduct in Greenwich Hospital?—A. We have instructions to be guided by, not relative to our conduct, but it is to regulate the pensioners' conduct.

But have the officers no instructions?—These are instructions given us by the general court confirmed by the Admiralty, which instructions we go by with regard to the regularity of the pensioners, and the punishment that is inflicted upon them; sometimes, in little points, it is left to the majority of the council, what they think right.

Are there no instructions to obey the orders of the governor, and the lieutenant-governor?—There are such instructions.

Have you such orders?—I have.

How far do you think those orders reach?—The naval officers of Greenwich Hospital are set down in that royal asylum, for their past services; the civil officers, for what is expected from them, they are supposed to be active men, capable of doing their duty, or they are unfit; the naval officers; if I am not able to come out of my apartment, the governor, or lieutenant-governor, cannot compel me to it; the civil officers are paid, for what is expected from them they are sup-

posed not to be feeble men, but men capable of doing their duty.

But I ask, if there are not instructions to obey the lieutenant-governor?—Yes.

Then, if the lieutenant-governor orders you to inspect the meat, are not you bound to do it?—I should desire him to give me a written order, if he desired me to do any thing I thought not my duty, to justify me for doing an unwarrantable thing.

Did you ever know an instance of a written order being given in the Hospital to you, from the governor or lieutenant-governor, to do your duty?—I never was desired to do any thing improper by either of them; captain Baillie never set me upon such a thing as that in his life; if he had I would say, I will obey you, if you will give me a written order; but I think this is not a naval officer's duty.

You don't know of any written order being given?—No.

Did you ever inspect the meat, by the order of the lieutenant-governor?—I never did; I recollect when the steward and the clerk of the cheque have sent to me, I have gone there with the captain of the week; we have condemned meat, and sent away that which was not agreeable to the contract; and several times we have sent to market for the best meat that we could get; but sometimes the meat has appeared very fair to the eye; some that appeared to be bull beef was as fair to the eye as could be; when it was boiled, it turned out to be bull beef; it would have deceived a butcher; we must have been rascals to have done it designedly.

I ask you, whether you have not, by the orders of the lieutenant-governor, gone and inspected the meat?—I cannot recollect that I ever received any particular orders from the lieutenant-governor; I have gone in consequence of the civil officers sending.

Have you heard of any other naval officers going by order of the lieutenant-governor?—I have.

But had they any written order?—If the thing had been wrong, a written order would not make it right.

But you never knew of their having a written order?—No.

You have talked of a memorial that was brought to the military council of the House.—We looked upon ourselves, till of late years, civilians; we are kept upon the list that we might have the half-pay, but we are all superannuated in Greenwich Hospital.

But whether the council of the house has not been called the military council?—There is but one council.

But is that called a military council?—It is often called so by pensioners, and many others, but we call it a council.

Have you read the commission?—I have.

Do you remember whether it is, there called a military council?—I don't recollect particularly.

With regard to that memorial which was

brought to the council board, complaining of captain Baillie when he was lieutenant-governor, which of the chaplains was it that brought that memorial forth?—Neither of them.

Who brought it?—The present lieutenant-governor, captain Maplesden, I remember perfectly well, pulled it out of his bosom at council.

Was there a majority of military officers at that time present?—Certainly a great one, I think.

Was there a majority of military officers, for presenting the memorial, or not?—There was a majority of military at the council.

Do you remember how many military officers were at the council?—The books will tell.

You don't remember particularly, that there was a majority of military officers, at the council, against the memorial?—I will repeat them if I can; captain Baillie did endeavour to persuade some not to sign it; I will tell your lordships who were the officers that did not sign it; captain Allwright, lieutenant Kerr, lieutenant Ansell, and, I believe, lieutenant Lefevre, but I am not certain whether he was there or no, if he was, that makes four; lieutenant Kerr is here now. There were the present lieutenant-governor, captain Lynn, captain Chads, lieutenant Moyle, and myself; five military officers that did sign it.

Then you were five to four?—I don't recollect any more naval officers; I remember lieutenant Kerr said, he did not know what to do; he seemed very much agitated; I said, every one must judge for himself.

Who were the civil officers that were present?—The memorial is upon your lordships' table; I really cannot recollect all of them.

With regard to what you have termed riots, what is the rule in Greenwich Hospital, about the pensioners being absent? What time of day are they allowed to be absent? And where do they go?—We have got a day-book, and a night book; no man is to absent himself, by the rules of the house, without leave; there is a muster every day in the week, except one; every man is to attend his muster.

What time is the muster?—About twelve o'clock.

From twelve o'clock, what time have they leave of absence?—They must be in the gates by ten o'clock; they have leave of absence, when it does not interfere with their duty.

What duty?—There is guard duty, and sentry duty.

They have leave of absence to go where they please?—Yes; but those men who were at your lordships' door, were here at eleven o'clock in the morning; they should have been at Greenwich Hospital at twelve o'clock, to attend their muster.

You have said, that all complaints, made by any officers, ought to be carried directly to the council, and immediately taken notice of?

—There is a complaint-book, in which the complaints are put down every day, the common complaints of quarrels between pensioners, and neglect of duty; but where the pensioners seem to be aggrieved, and want immediate redress, it is the duty of the person who knows that, to acquaint the commanding officer upon the spot, who has a power to call a council, and lay the matter before them as soon as possible.

Were you present, perhaps a day, or two days, before the late fire, when lieutenant Kerr came to council and complained of the danger of fire in the taylor's room?—I don't recollect lieutenant Kerr, or any other person, making any complaint in Greenwich Hospital of danger by fire.

Before the fire began?—It was not done, I will venture to say, by any officers as a matter laid before the council; it might be mentioned in conversation.

In what manner was it mentioned?—As far as I understand it was mentioned, that the taylor's room, they wished it was removed: or something of that sort.

When was that?—I was not present; if I was, I did not attend to it; I heard that such a thing had been mentioned.

Were you at the council when there was a reference made to it from the board of directors, touching the allowance made to the men in money, some years ago, instead of meat?—Does your lordship mean the chalk-off list, or the butler's list?

Both were mentioned.—I cannot speak positively to that; I do not recollect that; but I know, in regard to the butler's list, and chalk-off list in particular, I have had complaints in the hall made to me, in my duty week; but the complaint has been, that the butler gave them provisions instead of chalking them off, when it was their proper turn to be chalked off, and they looked upon it as a hardship to be obliged to take the provisions; that I remember more than once or twice.

But do you remember having been at council when the chalk-off list was represented by the council, to the board of directors, to be abolished?—I recollect I saw at that time, and at that very time that it was done; I looked upon it as a thing that was necessary, but after that we re-considered it, and we found that there were very many deserving, sober, worthy fellows, in the Hospital, who had families; and by letting them be chalked off, they could buy with this money, sufficient to support a wife and two or three children, when a small allowance would not; it was in consideration of that, that I altered my opinion.

Did the council take any steps in consequence of that, to signify to the directors, that they had altered their opinion?—It was not mentioned to the directors, but that was my private opinion.

But did the court of directors take any notice of that which was a unanimous reference

to them from the council?—I believe they did examine into it, and found it would be productive of ill consequences, that they did not at first foresee.

Did the board of directors take any notice of it?—The governor and lieutenant governor, the treasurer, and the auditor belonging to the board of directors, they might tell it to them.

Do you know that they did?—I do not know that they did.

Did they comply with the unanimous recommendation of the council?—I did not hear that there was any alteration.

You must know whether there was or not?—I believe not; and that because it was in consideration of being of service to many deserving men and their families.

Was the unanimous request of the council complied with by the court of directors?—I believe not.

Was any reason given why they did not comply with it?—In private it was mentioned, but not in a formal manner to the council.

Lieutenant *Moyle* called in by Lord Sandwich.

Q. Lords Dudley and Chesterfield. Whether you were present at the measurement of the linen?—I was.

How did you proceed in taking such measurement?—There was a standard of the length that was proposed by the house, it was originally so; one long stick,* and at one end of it, it was marked a quarter of a yard, a nail, and a half nail; and there was one person stood at one end; captain Chadds was at one end, I was at the other.

How many years have you been in the Hospital?—Above 30.

Did you ever hear the men complain of their shirts or sheets?—Never that I heard.

Does the present steward, Godby, exercise his office duly?—I think he does; he frequently has called upon me as an old officer, to advise with me; my apartment is close to his office.

Is there any occasion of complaint against him?—I never conceived that there was.

Duke of Richmond. Whether you have had any additions made to your apartments within these few years?—Certainly.

What are they?—A small parlour, and a bed-room.

Has not your kitchen been enlarged?—Yes.

Have not the walls been removed from their foundations, in order to make that?—None.

Has not there been a party-wall removed?—There was a plaster wall, but it had no connection with any foundation-wall.

Is yours a large kitchen?—It is a very good kitchen: before it was enlarged, it was but

seven feet wide; and I had a family then of seven children.

Is there any kitchen in the Hospital larger than yours?—I don't know; yes, I believe there is.

How many?—I speak only by guess, I never measured any of them; I believe there may be two.

Which are they?—I believe the lieutenant-governor's, but I am not certain, I never measured it; nor I don't know that I have been in it since it has been his apartment.

Are you sure that your kitchen is not so large as the lieutenant governor's?—I don't know that I was ever in it but once in my life, and that is 20 years ago.

What do you guess about it?—I cannot guess; I am at your lordships' bar upon my oath.

Do you know whether there have been any seafaring men introduced into what is called the civil establishment, within these last seven years?—I recollect that there was a cook's mate made from one of the pensioners; a man behaved with great integrity in the kitchen, when he was an underling; and for that reason he was made a mate when there was a vacancy; he was appointed, I believe, at the recommendation of captain Baillie; I think I have heard so; but I don't speak positively to that.

Were you present at the council that voted to abolish the chalk-off list, and to recommend it to the court of directors to abolish it?—I believe I was at the council; but whether the minute was in that nature, I cannot say; I think it rather a reference from the board of directors to the council, for their opinion, with regard to the utility.

Do you recollect whether they did not recommend in consequence of that reference, that the chalk-off list should be abolished?—I believe they did.

Do you recollect whether that recommendation was unanimous?—I cannot recollect, it is a good while ago. In trifling matters I have many times observed it, in gentlemen whose conversation upon the points have been different to their views, they have given into it at last, because they have seen that there has been a great majority in favour of them; and they were not willing to enter into disputes, or to make a difference in the council, but to give it up; and I believe that I was one of those, from an observation, that from a long time that I have been in the Hospital, I have known the pensioners, who many of them have wives and families, have solicited to be on that list, on account of assisting their families; that in the winter time, they could with the money they sold their meat for to the butler, they could make a mess with the broth, to supply their families.

Is it the practice of the clerk of the council, to set down, that it is the unanimous recommendation, when any body differs?—I

* This is a new mode of measuring linen, with a long pole or stick, two yards and an half long, with a person at each end stretching out the sheets, &c.—*Orig. Ed.*

believe not; it then says, I believe, by a majority.

Then if that recommendation is said to be unanimous in the council books, do you imagine or not, that it was unanimous?—I have mentioned the reason with respect to myself; I can answer for no one but myself; I did consent to that, though at the same time I thought it was better as it was.

And yet did you consent to have it set down unanimously, that it was your opinion when it was not?—I did; and have, in many instances, without any dishonour or discredit to myself, I think; when I have seen that a number of gentlemen were of opinion different from what I have been arguing for, I have acquiesced for the sake of quietness and peace, not to make uneasiness in the council, where the point is not of any consequence; and in this case there was a great majority, and I went with the tide, to speak as a seaman.

Do you frequently give up your opinion when you find there is a majority?—Not always.

Do you submit to its being set down, that it is your opinion, when the thing is contrary to your opinion?—I have answered that already, and can only give the same answer; where I have in many cases seen a number of gentlemen that were of a different opinion from mine, and where the thing has been of a trifling nature, I have given up my opinion; I have said, let it go as you please.

Then how is it possible for the court of directors, to whom you made that recommendation, to know whether it was the unanimous opinion of the council, or not?—There were, I believe, a great number of gentlemen that signed it; I do not recollect the exact particulars, it is a great while ago; if it is thought even a fault in me, I do not mean to hide it from the committee; in the mode I have acted, I do not feel myself ashamed of it.

Who is the fourth captain of Greenwich Hospital?—I cannot say; I have never seen him, I believe.

What is his name?—I do not know, as he has never been among us.

Is it captain Cook?—I think it is not, I only speak upon hearsay, I don't say positively; there has been no captain appeared since captain Maplesden was appointed lieutenant-governor, which made a rise up of the captains, I have never seen any person that I recollect.

Did you never understand that captain Chadds was under an obligation to give up his station in the Hospital, if Mr. Cook returned?—I have heard that in conversation, but can say nothing certain as to that.

You do not know any thing of captain Cook's having resigned to captain Chadds upon that condition?—I know nothing about that.

When you were present at the measuring of the linen, you said you stood at one end of

the measure, and captain Maplesden at the other; did you, upon that measuring, find all the linen to be of the regular standard of the Hospital?—No, certainly not, I did not expect to find it; but if your lordships will permit me to refer to a note, which I took at the time, I will acquaint your lordships how I found the measurement, 1,290 sheets that I was at the measurement of myself, and then I signed a paper, which is, I believe, before your lordships, with respect to it, I have a note, I put in my book at the time, that I cannot without looking at that be particular.

Look at your notes.—(Refers to his notes.) On March the 27th, and the 29th, 1779, Mr. Godby called on me, and begged it as a favour, that I would go with captain Chadds and captain Lynn, himself and the clerk of the cheque, to measure some linen; I saw measured 1,290 sheets, there were 60, one nail over the standard; ten, two nails over the standard; one, a quarter of a yard over the standard, 615 were agreeable to the standard; 395, one nail under the standard; 168, two nails under the standard; 35 were three nails under the standard; six, four nails under the standard, making in the whole, 1,290.

Were any of the shirts measured at the same time?—Yes; I was at the measuring of 500 shirts; I believe it was the next day; the standard length of the shirts, I understand to be one yard, a nail and a half, there were 228 agreeable to the standard; 206, were half a nail under the standard; 58, one nail and a half under the standard; eight, two nails and a half under the standard, that made up 500.

Were there any over the standard?—There were not.

Have you ever been present at the measuring any linen, in any former year?—No; I never was called upon; I was asked upon this occasion; we went to various parts of the Hospital, we went to the infirmary to both the matrons' depositories, where they kept the linen, where they took them down promiscuously, and captain Lynn, who was one of the gentlemen that was with us, he acted as secretary, as a cheque upon the other, and one of Mr. Godby's clerks at the other table took down, and when they had done, it was in our presence summed up and compared, whether they were right or not, and what I have read to your lordships is the result of the examination.

Were they new shirts or old?—Old shirts.

You say the standard is one yard, one nail and an half?—I think so.

When you say the word standard, that I understand to be a good standard measure for a middle sized man, or a tolerable sized man?—I understand it to be the measure that has always been allowed.

Do not you apprehend, there requires more or less, according to the tallness and size of the men?—There is likewise extraordinary shirts allowed, where there is a greater quan-

tity of linen in the shirt; where a man proves a very tall man, they are so exact, that if a tall man comes into the ward, where a short man has been, and his shirt, which if he is a very short man, he must have it reduced from the standard I imagine; so he has nothing else to do, but to go to his nurse, and tell her, that shirt is too short for him, she carries it to the steward's office, and it is changed immediately for another that fits him, that has been the practice all the time I have been in the house.

Had it been the practice before captain Baillie's book came out, to send for the officers to see the linen measured?—No, I never heard that it was.

[Lieutenant Moyle withdrew.]

Sir John Fielding called in.

Did lord Sandwich send to you immediately upon the news of the fire at Greenwich?—Yes.

What directions did he give to you?—He wished to have the matter enquired into, and I then told his lordship what I thought would be very proper steps to be taken for that purpose; and he directed the secretary, Mr. Stephens, to take down those directions; those directions, to the best of my recollection, were, that the governor of Greenwich Hospital be desired to collect all the parties that were upon the spot where the fire took place, the day before the fire happened; and that he should also collect all the people that came to the fire, at the first appearance of it, and have all those people ready together, that they be examined at a day affixed, which was I believe, a day or two after the fire, so that the directions in reality were given by me, and not by my lord Sandwich.

In consequence of that, did you make a strict enquiry into the matter?—I did, as elaborate an enquiry as ever I made in my life, and founded upon the horror I had of such a transaction, for it was represented to me, before I enquired into it, as if it might have been done maliciously.

How many days, or what time did that enquiry take you?—The enquiry of the people in the Hospital took two days, the subsequent enquiries, for we were not content in taking the facts as they stood, but we went farther, and even pursued every little hearsay; of any old nurse, or any drunken pensioner, or whatever had been said from time to time; the enquiry continued about a fortnight, but two days only at Greenwich; afterwards the persons were sent up to me by sir Charles Hardy; whenever there was any thing to be enquired into, they sent the parties up to me; they were all examined upon oath, and all the essential parts of the examination were taken in writing, and signed by the parties.

Do you know whether the captain of the week, and the officers of Greenwich Hospital, were examined upon oath?—The informations are in the hands of the secretary of the Admiralty, Mr. Ibbetson, that will show, I do not

immediately recollect all the names of the officers, but being acquainted with one of them, I particularly recollect, that the oath of captain Allwright was taken; the mode we took was this, I considered that the fire must have arisen, either from accident, from interest, or from malice, and to those three points every person was examined; they were suffered first to tell their stories, and if they knew nothing that I thought was matter of importance at all, we did not take it in writing, only took loose minutes of it, and they are in the hands of Mr. Ibbetson.

Upon the whole then, did you do every thing that was in your power to investigate that matter to the bottom?—I am sure, before such a respectable body as this, it would be vanity in me to say, what enquiry I did make; but I believe all the parties that heard it were satisfied, I was acting the part of an upright man, and a good magistrate; and I did every thing in my power, and am satisfied that the affidavits, when they come to be read, will convince every member of this honourable House.

From this examination, where did it appear that the fire had arisen?—There is an apartment called the tailors' shop; this apartment goes out of the regulated part of the Hospital, called the Duke of York's ward, up a few steps, into this tailors' room; it appeared satisfactorily, as will appear from the informations, that it did not break out in the tailors' shop, for the proof of putting out the fire is so well established, and the proof of people being in that room, when the fire was discovered, is equally so well established, that it was morally impossible that that fire could break out in that close shop; the fire from the evidence, will appear to be under this tailors' shop, there the seat of the fire was, and there was no fire at the time when the fire was under the shop, no appearance of fire in the shop, that appears clearly to demonstration, from the nature of the evidence.*

What was the place under the shop?—The cieling under the floor of the tailors' shop, covers over, with some little distant space, the alcove of the altar-piece; for, in order that we might investigate this matter with exactness, which is a thing of very great consequence, Mr. Mylne, the surveyor there, a very ingenious man, as I could not see objects so well, he made a model of the under part of the floor, covering over the altar-piece, where the fire evidently was seen.

What sort of a place did you say was under the tailor's shop?—First, there is a floor, then under that a vacant place not used for any purpose whatever, but covered, over the alcove of the altar-piece, in the chapel, which is situated almost all the way under this tailors' shop.

Where did it appear that the fire began, in

* See lieutenant Kerr's evidence, page 231.—Orig. Ed.

the alcove of the chapel, or in what vacant place?—It did not appear from any circumstance or fact, that we could support, that we could form a real fair conjecture, that it arose from accident, from the tailors' shop, from interest, or from malice; now from interest, we had a strong presumptive evidence it might arise from that quarter; and that from this principle, the contractor for making the clothes, is, as I found, a mere contractor for labour, and therefore was not necessary to be a man of property; indeed, he turned out to be so low-life a fellow, that he could scarce find money to pay his men; but he was obliged to find very ample securities for the property he was entrusted with; now, before this fire happened, he had near 500 suits of clothes, ready made, that he was to deliver out; the cloth had been given out to him by the proper officers of the charity; therefore, it was imagined, that if he did not account for this cloth, and the clothes being in the house at the time of the fire, that he might have embezzled the property entrusted to his care, and have done this maliciously, in order to conceal his own villainy; but upon pursuing that enquiry upon the principle of interest, it appeared very clearly and satisfactorily, that all the property of the Hospital was in the tailors' shop the night previous to the fire. From an apprehension that he might have done something of this sort, the governor was kind enough to have patterns of all the different cloths delivered to him, and they pursued the enquiry throughout all the pawnbrokers of London, to see if any thing of that sort had been pawned; so that it turned out clearly, that there was no motive of interest in this contractor to do this villainous act.

What did it appear then, from this examination, was the cause of the fire?—No cause could be assigned, for it remains now in as much a state of obscurity, as it did at the first moment; and perhaps may be a great while, and perhaps for ever.

At what time of the day was the fire first discovered?—I think about six in the morning.

Were there any people at that time at work in the tailors' shop?—No, the circumstance was this; I can remember it exceeding well; when we came to enquire into the people, who went to this shop in the morning for the key, entrusted by the contractor with his servant, he went to town that night; a boy, a sort of an apprentice or clerk, or something of that kind, sent with the journeymen, in order to let them into the shop, and upon going into the shop, those six steps that lead from the Hospital to the tailors' shop, have a door at the top, and a door at the bottom; when they unlocked the door at the bottom, the smoke then came out from between the chinks of the door, that lead up to the upper door; so that it was a little passage between two doors, one directly leading into the shop, the other directly leading out of the Duke's ward to those steps; when they opened the

first door, there was such a violent smoke came from under the steps, that they were not able to get up; but however, one or two men, whose informations were taken, did get up, went into the tailors' shop, one with a candle and lanthorn in his hand, walked round the shop, and saw no fire; upon this discovery the proper officers attended, proper alarms were given, and every thing was done that was necessary upon the occasion, but as the fire was under the shop, and they did not rip up the steps immediately, to see where the seat and origin of it was, till such time as it was got to such a height, to conceal the origin of the fire, which was never discovered.

Who were those men that went round the shop with a candle and lanthorn in their hands? Were they the tailors?—There was a boatswain and a tailor, and two or three indifferent people; it is proved very substantially by three or four different evidences.

Was there not a woman that swore that the fire was seen in the tailors' shop?—There was a woman that spoke from hearsay evidence, which, when traced up, came to nothing, that a man had been seen smoking in the shop a long time before.

It was hinted to you, that it might be set on fire maliciously; who hinted that to you;—I forget that; the three persons who were present, when I first heard of it, were Mr. Stephens, Mr. Cooke, and my lord Sandwich; but there were no hints from them, but the conjecture rather arose to my own mind, from the history they were giving of some great disputes that had been in the Hospital. It is natural when enquiring into the cause of a thing, to see what motives were likely to produce it; I had not heard of this dispute about captain Baillie at this time; but when they mentioned to me that there were disputes in the Hospital, that it might possibly arise from malice.

You say it was not hinted to you by any of those persons you named?—No, my method is always to go immediately to see what motives can produce the fact, to enquire into the origin of any thing, from a conviction, that all human actions must have an adequate motive.

Did the tailors' room appear to be a boarded room?—It was.

Do you think, upon the whole, that it was neglectful or not, to suffer a room of that sort to be in the care of the tailor?—It is an absurdity in itself; for any garrison, or place, to have a set of outlaws in it; or in a ship; I have had the honour to serve his majesty on board a ship; if all the parts of that ship were under due regulation, and there was an outlawed place in the fore-castle, or down in the hold, it would be an exceeding absurd thing; and to leave a body of thirty tailors drinking gin all day, in such a place as that, appears to me to be an irregularity.

I beg you will say, whether there came out upon that examination, that there had been

people in the tailors' shop late the night before?—No; it appeared the fire happened the morning after New-year's-day; the tailors, as they called it, knocked off the day before at three or four o'clock, to keep New-year's-day, to make holiday; then it was necessary to shew who were, the people that was in this place, at the time of shutting up the shop; there was the master tailor himself, his clerk, and one or two indifferent people belonging to the Hospital, a kind of scouts, who came there to do any little office, were all there at the putting out of the fire; and the description of the manner of putting out that fire, is set forth in their information; it was the middle of the day, there was no necessity for a candle; there were no goods packing up, or to be sealed, and there was no cause for any light whatever; and they carried their observations of putting out the fire to such minuteness, that after they had raked the fire out, they threw water upon the cinders when they were upon the hearth, and pulled the circular fender out, to prevent any mischief happening; so that the care upon putting out the fire, seems to me to be exceedingly satisfactory.

How many people, in general, did it appear, worked in that place?—Upon an average, thirty. This man contracts only for labour; and, upon examination, I find they got very little out of every suit of clothes; they only contracted for the labour and the trimmings, so that the profits arising were very low; and I do suppose, that the tailors employed were of the lowest order.

Did it appear that they had gin there to drink?—It appeared, that the master tailor used to have a keg of gin in his cutting-room, and to serve it out to his men.

Did it appear they used to work there by candle-light?—That I do not recollect; I suppose in winter time they did.

You said captain Allwright was examined upon oath?—He seemed to me the earliest person there that could give any account, and he is a gentleman I happened to have a particular knowledge and acquaintance with; he is a very amiable worthy man; I do myself, I may be wrong in my judgment, but I do think, that upon the difference of opinion that arose between him and a very active fellow that was there, who was going to rip up the steps and pull down all before him, that he might see the seat of the fire; he was prevented from doing it by this idea, whether right or wrong I do not say; they said, if he took up the steps, it would give vent to the fire; now if they had taken up these six steps instantaneously, they must have seen where the seat of the fire was.

Who advised taking them up?—A spirited fellow, I think his name is Cox.

Did you ever hear what is the amount of the damage by the fire at Greenwich Hospital?—No.

You have mentioned captain Allwright;

what character does he bear in general?—What I know of him is this, he is a gentleman that has been protected from his early youth by the duke of Bolton, and I have seen him hundreds and hundreds of times at Chatham with the duke's relations, and I always considered him as a very amiable, modest, worthy man; he did apply to me two or three years ago, together with lieutenant governor Baillie, in order to prosecute some men that had been guilty of some robberies in the Hospital; and captain Baillie and captain Allwright carried on their prosecutions with a great deal of spirit and propriety. I never saw captain Baillie but at that time in my life, but captain Allwright I have known many years; he is as amiable a man as I ever knew in my life.

And is captain Allwright likely to side with a man that is causing great disturbances in the Hospital?—He seems to me the contrary; he appears to be a man of a tranquil temper, a polite well-behaved man.

You could give credit to his opinion?—As soon as any man I know.

[Sir John Fielding withdrew.]

Captain Chadds called in again.

Viscount Dudley. Whether you know any thing of a dispute and a quarrel between two gentlemen of the Hospital; one a military man; the other, in the civil employ?—A. I do.

Who are they?—Lieutenant Smith and Mr. Mylne, the surveyor of the works.

Can you tell us any thing that passed upon that occasion?—One morning last summer, lieutenant Smith sent to me, and desired to speak with me; I accordingly went to him; he told me he had had some difference the night before with Mr. Mylne, and would be glad of my advice how to act upon it; as I was a military officer, and he was a military officer, I told him to relate his story to me, and I would give him my advice very cordially; he said last night we were at the club; the subject was captain Baillie's book, which was the cause of this disturbance; they had some altercations there upon it; I was not present: this is as lieutenant Smith told me; when the club broke up, they withdrew; Mr. Mylne was going to his apartments along with another gentleman.

Be so good as to confine what you say, to tell us what part you had in making up this dispute?—Mr. Mylne was going to his apartments; Mr. Smith followed him; Mr. Smith came up with him, close to his apartments; they had some altercations there; this is as lieutenant Smith said; words ensued, and then blows; which struck first I cannot say; Mr. Mylne, I believe, was more successful than lieutenant Smith, and knocked him down; I said, I think you are to blame, that is my opinion of the matter; for had you gone to your apartments, this thing would not have happened, for Mr. Mylne was gone to

What was the reason for that?—I assigned fifty breaches; but the witnesses that were to give an account of the transaction, and to give strict and legal evidence before a jury, had not been particular in the accounts they had taken, and could not speak to many of the days, when they might have been delivered, with precision; they could not specify particular days, except to very few of the breaches.

That article for the forfeiture of 10*l.* for each breach of the contract, which you think was not intended to apply to that particular case, but that you ingeniously turned it to that; what was that inserted for, do you think?—I conceive the article was intended as a general one; but it did not strike me, that the words applied to this particular kind of breach; because, in that article, there is a provision, that the Hospital disliking any of the meat may return it, and go to market and supply the Hospital with other provisions in lieu, and the contractor is to make a deduction out of his account for it; and it did not appear to me, that the case in question immediately applied to this particular kind of breach of contract; I should rather conceive that that was intended where the contractor, in times of scarcity, and finding meat at a much higher price than he had contracted to supply it for, might hang back and not perform his contract, that I considered the penalty was intended against him more in that respect than any other.

You apprehend, that the 10*l.* penalty was for each failure of his contract?—And so it was applied, upon this occasion, and the jury gave us a verdict.

But you did not think justly?—I had my doubts about that, but thought it might be applied to the point, and it answered my purpose.

Upon the second trial, in Guildhall, I think you said, that the chief justice, lord Mansfield, before whom it was tried, said, this was a persecution, and not a prosecution?—I neither did say, nor could mean to say, that the noble lord said that; but that Mr. Dunning, of whose honour and humanity I spoke, took up the matter with an unaffected warmth, and he considered it as a persecution.

Do you take upon you to say, that lord Mansfield said, from the bench, that it would be more for the end of justice to compromise it?—No, as I understood it, that the ends of justice had been sufficiently answered already.

Did you mean to say, that it was dropped from the bench or not, that the ends of justice would be as fully obtained?—Not expressly said in terms; but I understood the hint that dropped from lord Mansfield, that all the circumstances of the case considered, it might as well be compromised as tried; that the ends of justice might be as well obtained, was what myself subjoined. [Here Mr. Gurney was called upon to read his short-hand notes, by

which it appeared, that Mr. Morgan had, in the former part of his evidence, made lord Mansfield say, that it would be a persecution, and not a prosecution; but as Mr. Morgan said, he had through mistake mis-stated that fact, he was permitted to re-state it, and it now stands upon the Minutes as the witness said he meant to express himself.] A very little from my lord Mansfield, to those who know him in his judicial capacity, conveys to his hearers a great deal; my lord Mansfield said but little; and the representation made by the solicitor to the directors did, in my opinion, convey very properly the idea that he entertained of what had passed; and that was this, that my lord (I think the expression is) seemed to hint, that under all the circumstances of the case, might as well be compromised as tried; I think that was the representation that was made by the solicitor; that was what I considered my lord Mansfield had said; but very little, but in the very little he did say, I understood a great deal; and I have not been attempting to state to this House, a long conversation of lord Mansfield, when I do not know that he dropped half a dozen words upon the subject; therefore I have been misunderstood; when I have been giving my own construction, your lordship has thought I was giving lord Mansfield's words.

Were you in court yourself, or did you take it from the solicitor, what lord Mansfield said upon that subject?—I was in court.

What was the result of what lord Mansfield said upon that occasion?—A hint from lord Mansfield, that under all the circumstances of the case, the second cause might as well be compromised; upon the cause coming on to be tried, something like a question dropped from lord Mansfield, if that cause was not mentioned, something like it; upon which Mr. Wallace, in answer said, that the directors thought, if they compromised it of themselves, without the approbation of the court and council, that it would look like extortion; upon which lord Mansfield said, "No, nothing of that kind." The council of the Hospital thought it advisable to compromise; I was of that opinion, that the man had been sufficiently, and it was my own opinion, more than sufficiently punished; it can have cost him, in the whole, little less than 900*l.*

Is that the whole of hints, that you understood from lord Mansfield, given in so few words, which you understood so largely?—That is the substance.

I think you have said, that it was your opinion also, as counsel for the directors, that the butcher who had been convicted of one wicked act before, should not be convicted again, because it would be persecution?—I am afraid my opinion is not properly understood; I think it is tantamount to conviction, when a man agrees to pay 100*l.* and costs, which amounted to near 300*l.* that that opinion was not ill-founded; and that it was not the duty of the directors, in a case of this

kind, to seek the *summum jus*; they had made an example of him sufficiently.

In the first cause or the second?—In the second, in my opinion; for the jury was sworn, and the man was put to as much expence as he could be.

[John Morgan, esq. withdrew.]

Doctor Taylor called in, one of Lord Sandwich's witnesses.

How long have you been in the Hospital?—Between 13 and 14 years.

Who appointed you?—I was appointed in lord Egmont's time.

Do you conceive the infirmary to be a good establishment?—The infirmary is, of itself, one of the best hospitals in this country.

How many pensioners will it hold?—Between 240 and 250.

Will it, upon an average, hold all the sick of the Hospital?—It always has done it; and we have had room enough to shift the people.

Is it designed to hold both the helpless and sick, or sick alone?—It will hold only the sick alone.

Do you attend the examination of people who are candidates to be admitted into the Hospital?—It is my duty to be present at the Admiralty on every examination of invalids.

Who attends?—Lord Sandwich, since he has presided at the board; he has always attended and examined the invalids, when he has been in town.

How are they admitted?—They bring certificates of their servitude, and they are admitted by the length of their services, and by infirmity. Those that have had long service, lord Sandwich generally puts upon short lists; and those that have accidents, they are put upon a short list; those of less merit and service are deferred.

Does it appear that they are preferred by favour or by merit?—Lord Sandwich makes it a rule to destroy all recommendations before he examines the parties. The examination, in his lordship's time, has been as impartial and attentive as any I ever saw.

Could the admission of pensioners be better regulated than it is?—I think not; there has not been a landman got into that Hospital ever since I have attended, but those who have served at sea.*

Cross-Examination.

If you recollect making any representation concerning any bad veal for the sick?—I remember some very bad veal one morning being brought into the infirmary; I saw it, and recommended the cooks to carry it to the proper officers; it was very indifferent, but it was not putrid; it was fresh.

Was the colour good?—It was in all respects bad veal.

* It is presumed he does not speak of officers or petty officers, which is of infinitely more consequence. *Orig. Ed.*

Did you ever find the butter bad?—No. I have very seldom had any complaints about provisions: there has been complaints, I know, at one time, about some butter; but I don't know whether it was in the infirmary or in the Hospital.

Did you never send a quantity of bad butter to lieutenant Smith, or captain Chadds, for their inspection, which your patients could not eat?—I have forgot that circumstance; it is very possible I might; but it is a long time ago.

Was the same sort of beef supplied to the men in the infirmary that was furnished to the pensioners in the Hospital?—I believe the same sort; I never heard any complaint of the beef in my life.

Did you ever complain to the directors of the defective state of your house in the infirmary?—We wrote a letter to have our house refitted; we have been eleven years in our houses, and there has been nothing done to them in that time; that was a general letter wrote to desire that they might be repaired, and the wainscot might be put to rights, and the painting refreshed and white-washed.

Was there nothing done to them but painting and white-washing?—They are repairing them at this time; repairing the wainscot, painting and white-washing it, and laying some of the floors.

Did you complain of captain Baillie's printed Case?—I signed the complaints against captain Baillie.

Did you complain, at first, with the other officers, or afterwards?—When the book came out, and I found reflections thrown out against the physical people, as well as other classes, I then signed both the first and the last.

Are you one of the council of the house?—No; I have nothing to do with the council.

Has captain Baillie made any reflections upon you in the case of Greenwich Hospital?—He charges the faculty, I think, with partiality; he calls us factious; these charges I do not understand.

Do you think it possible that bull beef could be received for ten months, instead of good fat ox beef, if the clerk of the cheque and the steward's clerk had done their duty?—I think it impossible they could be served with bull beef in that time.

Do you imagine they were not served with bull beef during that time?—Yes; I imagine they were not.

Did you attend the trials?—No, I never did.

Did you not hear it had been made appear there, upon oath, that they were served for ten months with bull beef?—I cannot think it possible that they could, because I never heard any complaints among the people; and I think I should, if it had been so.

[Doctor Taylor withdrew.]

John Baptist Cipriani called in.

The Earl of Chesterfield. Do you know

the terms upon which the Painted-hall was cleaned at Greenwich?—I did not but lately.

You know it now?—I do.

Was the bargain of cleaning it a good bargain on the side of the Hospital?—I think it is very reasonable.*

Was the cleaning of the Painted-chamber at Whitehall upon better terms?—Much dearer; but I did not think myself well paid.

Cross-Examination.

How long have you been acquainted with the paintings at Greenwich-Hospital?—Very lately.

Did you ever see them before they were cleaned?—I did.

How long ago was that?—I believe it is nine or ten years ago.

Was there ever any scaffolding made by which you could examine them so near as to know what repairs they would want?—There was no scaffold at all at that time.

Where did you see them from?—From the bottom.

How high is the hall?—I cannot tell exactly the dimensions; but it seemed to me very high.

Is it thirty feet high?—Thereabouts, I should think.

At that distance could you be a judge of what repair they could want?—As I did not go as an examiner, I did not take particular notice of that.

Then, at that time, did you form any judgment of what it would cost to repair the paintings?—I did not think of it.

From that time when was the next time you saw the Painted-hall?—Last Sunday se'n-night.

That is since it has been cleaned?—Yes.

Did you go up to the ceiling, or then examine it from the floor?—From the floor.

Did you ever measure the Painted-hall, to know what quantity there is of it?—No, I did not.

Do you know, with any degree of accuracy, what work was done upon it?—I conceive, a great deal.

Have you any foundation for that conception?—I have.

What is it?—I have tried, myself, this kind of repairing at Windsor palace, and I find a great deal of damages, which I am obliged to re-paint over.

Do you know whether there was in this instance a great deal of damage?—I cannot tell that, as I did not go before with the eyes of examining the work.

Do you know whether any part was painted over again?—It is almost impossible to tell that, when it was well done, and I think

Greenwich Hospital has been extremely well repaired.

Do you know whether any part of it has been re-painted?—As far as my eyes could reach I could see.

I think you have said that the chapel at Whitehall was repaired?—Yes.

Did you repair that?—I did.

What were you paid for that?—For myself I was paid 400 guineas, and all the expences including the whole, amounted to near 700*l*.

Was the scaffolding included in that 700*l*?—No, that was built by the board of works.

Whom are the paintings done by in the Banqueting-house?—By Rubens.

Whom are the paintings done by in Greenwich hall?—Sir James Thornhill.

Do you know how many feet there are in Whitehall chapel?—I do not know.

Which is the largest quantity of work?—Greenwich Hospital, ten times larger, in proportion.

Do you know Mr. Bertels?—I do not.

Did you never hear of such a man that deals in pictures?—No, I do not know him.

The Earl of *Chesterfield*. Whether you do not think that if the cleaning of the pictures at the Painted-hall at Greenwich, had been put into improper hands that great damage might be done to them?—*A*. My opinion was, that it was a very lucky circumstance that they were so well repaired, as it is one of the best pieces of work that this nation can brag of; and I think it is well repaired.

Whether you know Mr. Greenwood?—I know him by sight.

No otherwise?—No otherwise.

[John Baptist Cipriani withdrew.]

Mr. *Lefevre* called in.

What do you know of the quarrel between Mr. Mylne and Mr. Smith?—I remember hearing in the evening that Mr. Mylne and lieutenant Smith had a quarrel; I can only speak of what I had from Mr. Smith, the next morning.*

Were you made a lieutenant through the interest of the rev. Mr. Cooke?—I fancy not; if I had, I dare say Mr. Cooke would have told me of it; I should suppose from different motives intirely; I was many years a mid shipman, though I had an exceeding good friend, one of the first men in the service, who is since dead: but my father despairing of my getting a lieutenancy, was desired to purchase some votes in Huntingdon, I was not at home at that time; I did not come home, I believe, for near two years afterwards.

Whom did your father purchase those votes of?—One Collins, a contracting carpenter for the Hospital at Greenwich, I believe.

What countryman is he?—I believe an Huntingdonshire man.

Whether you ever offered any living to Mr. Cooke?—Entirely the reverse, if it was the

* This is not a fair comparison, because Mr. Cipriani can earn as many guineas in a day, as the person who was employed can earn half crowns.
Orig. Ed.

* Here his evidence was stopt.

last words I have to say, I declare entirely the reverse; I remember particularly well that about the middle of the year 1777, Mr. Cooke said he should imagine that upon such an estate as Mr. Calcraft's, there must be an exceeding good living; I said there was; he said provided he could get such a living, he would go and retire upon it, and said he was certain my lord Sandwich would place his brother in his office; I said that living he could not possibly get, for that the reversion of it was given away years and years ago; it was given away before Mr. Calcraft's death; I shewed Mr. Turner the will, who could have told Mr. Cooke the same thing, and I have not the least doubt but what he told him so.

[Mr. Lefevre withdrew.]

Here the Evidence closed.

After this, the Duke of *Richmond* made a very long speech, in which he recapitulated the evidence which had been given, and observed upon it; and, in conclusion, moved,

"That the Committee have read the several papers referred to them by the House, and have examined several witnesses touching the affairs of Greenwich Hospital.

"That it appears to the Committee, that abuses of various kinds have at different times crept into the management of the said Hospital.

"That the Committee do not judge it necessary to trouble the House with any account of those which have been corrected, or with such as are either of small importance, or likely to meet with redress from the present constitution of the Hospital.

"But the Committee think it their duty to lay before the House an account of some of the abuses which still subsist, and are worthy the attention of parliament, especially as some of them appear to the Committee to have arisen from provisions introduced into the new charter, and to require such remedies as the interposition of the legislature is alone competent to afford.

"That the principal abuses at present existing, come under the two following heads:

"First, The introduction of landmen, to a very great extent, into various departments of the government of this Naval Hospital, most of them in breach of the express provisions of the original commission, and of the present existing charter.

"Secondly, The refusal or neglect of redress from the different boards in whom the management of the Hospital is placed, particularly in the general court, in appointing a partial and interested committee, to enquire into the complaints of the lieutenant-governor, the unjustifiable conduct of that committee, and the illegal proceedings of the board of Admiralty, in removing the said lieutenant-governor from his office, without ever hearing him in his defence, or even so much as alleg-

ing against him any specific charge of misbehaviour.

"Under the First of these Heads, it has appeared to the Committee, that five of the present members of the council are not seafaring men, or such as have lost their limbs, or been otherwise disabled in the sea service, as required by the charter of the said Hospital.

"That besides the above-mentioned five members of the council, there are twenty-one other persons who hold offices in the said Hospital also contrary to the charter.

"That of the three matrons, now belonging to the said Hospital, two of them are neither widows, nor daughters of seamen; while the widows of captains, in the Royal Hospital, have in vain petitioned for these appointments.

"That there are likewise twenty-five other employments, some of them very considerable and lucrative, which not being denominated offices in the house, may not fall within the express provisions of the charter, to be held by seafaring men; but as there is no art, or skill required for them, which a man who has served at sea may not be possessed of, it is contrary to the object and spirit of this institution, when seamen properly qualified can be found, not to give them the preference over landmen, who have no pretensions to the benefit of this naval charity.

"That the office of architect is the only one belonging to Greenwich Hospital, to which it appears, that a seaman may not be competent. But it does not appear that such an officer is at all necessary. When new works are carrying on, an eminent architect, like an eminent painter, may be employed, without loading the establishment with such a permanent office, as is particularly pointed out in the commission, but entirely omitted in the charter. It is still less necessary for the Hospital to have, as at present is established, two architects, Mr. Stewart and Mr. Mylne, under the different denominations of surveyor and clerk of the works.

"Under the Second Head,

"With respect to the court of directors, it appears to the Committee, That a most shameful abuse existed for a very considerable time in the Hospital, by the contracting butcher, Mr. Peter Mellish, supplying the poor pensioners with bull beef, and meat of the worst kind, worth only 14s. per cwt., instead of the best fat ox beef, for which he was allowed 32s. 6d. per cwt. And although the said Mellish was, in the year 1776, convicted in a court of law of this detestable fraud, in no less than ten instances, and was afterwards sued for fifty other breaches of his contract, which he was suffered to compound, yet the directors, instead of marking so infamous a cheat, by excluding him from all future dealings with the Hospital, have ever since continued to give to the said Mellish fresh contracts for supplying the whole Hospital with meat for a twelvemonth, under an

idea, as one of the directors deposed at the bar of this House, that although a man had been guilty of a fraud towards the Hospital, yet if he offered to serve for less money than any other person, there was an obligation upon the commissioners and managers of the Hospital to employ that man so convicted.

“ It also further appears,

“ That the practice of chalking off (whereby money is given twice a week to the pensioners, in lieu of meat and cheese) still continues to subsist, notwithstanding the unanimous representation of the council on the 9th of August, 1776, to the board of directors, ‘ That such practice is not only contrary to the establishment, but injurious to the health and morals of the pensioners, and is attended with many inconveniences, improprieties, and irregularities, and ought to be totally abolished.’

“ With respect to the general court, and the committee which they appointed, it appears,

“ That the foregoing, and other matters of complaint, were, in the printed Case of the Royal Hospital for Seamen at Greenwich, laid before the first lord of the Admiralty by captain Baillie, the lieutenant-governor, and afterwards on the 26th of March 1778, transmitted to the secretary of the Admiralty, to be by him officially laid before the board, with a request from the said captain Baillie, that their lordships would be pleased to summon a full and general court of the commissioners and governors, according to the true intent and meaning of the charter, to whom he most ardently wished to appeal, and prove the charges therein contained; hoping that to make such a court efficient, it might be advertised three times in the Gazette, as well as summonses sent.

“ That a general court of commissioners and governors of Greenwich Hospital was accordingly called, but without such advertisements or general summonses, and sat at the Admiralty on the 14th of April 1778. At this court it was resolved, that sir Merrick Burrell, Mr. Cust, Mr. Savary, Mr. Barker, Mr. Wells, Mr. James, Mr. Reynolds, should be a committee (of whom three to be a quorum) to investigate the grounds ‘ of the several charges contained in the above-mentioned book; and they were desired to proceed upon that business with all convenient dispatch, at such times and places as they should think most proper for the purpose; and when they had completed such investigation, to let the lords of the Admiralty know it, that another general court might be called to receive the report.’

“ That captain Baillie objected to the committee, as composed of directors, persons against whom his complaints chiefly lay.

“ That notwithstanding his objections, the said general court appointed the said committee, consisting of the seven persons above-named, who are all of them directors.

“ That captain Baillie in his letter of the

18th of April 1778, to the said committee, protested against their proceedings:

“ That notwithstanding the said protest, the said committee met at Greenwich Hospital, and sat seven days, but would neither suffer captain Baillie to proceed in his own way to prove his Case, nor enquire into ‘ any matters respecting complaints against either the court of directors, the general court, the governor, board of Admiralty, or first lord of the Admiralty;’ but confined their enquiry merely to such parts as respected the officers who had complained to the general court. And in the prosecution of this enquiry, the said committee suffered Mr. Morgan, as counsel for the said officers, to direct the mode in which captain Baillie should proceed to make good his charges, frequently refusing to hear his witnesses.

“ That no one member of the said committee attended the whole seven days which it sat, but that, nevertheless, a report of their proceedings was made to the general court, and signed by two of the members, who had sat as presidents, one of whom had been present only two days out of the seven; but declared at the bar of this House, that he had signed for the proceedings of the whole seven days.

“ That at the general court of commissioners and governors, held on the 12th of August 1778, when the report of the committee was read, captain Baillie in his letter of that day again protested against the proceedings of the said committee, as well as to their being constituted of directors only, and desired that the general court would themselves review the proceedings of the committee, offering immediately to produce before the said general court, witnesses and affidavits to prove every part of his complaints.

“ That at the said general court, the following Resolutions were moved and agreed to, viz. ‘ That the several charges contained in captain Baillie’s book, which have been examined into by the committee appointed for that purpose, appear generally malicious and void of foundation, and tending to disturb the peace and good government of the Hospital; and that a copy of the report of the said committee be, therefore, laid before the lords commissioners of the Admiralty; and that it be submitted to their lordships whether for the better government of the Hospital, it may not be advisable to remove the said captain Baillie from his employments of lieutenant-governor, and one of the directors thereof.’

“ With respect to the Board of Admiralty, it appears,

“ That on the 12th of August 1778, the same day on which the lords of the Admiralty received from the general court the report of the committee, and their advice to remove captain Baillie, their lordships immediately resolved, ‘ That directions should be forthwith given to sir Charles Hardy, governor of

'the said Hospital, to cause captain Baillie to be suspended from his employments, both as lieutenant-governor and director, and one of the council of Greenwich Hospital, till further order.'

"That the said captain Baillie requested, by letter of the 14th of August, 1778, Mr. Stephens, 'to move the lords of the Admiralty, to direct that he might be furnished with a copy of the order by which he was suspended,' but could never obtain the same.

"That captain Baillie in his letter of the 1st Dec. 1778, to the lords of the Admiralty, entreated to be restored to his station in the said Hospital.

"That captain Baillie, in his letter of the 8th Dec. 1778, to Mr. Stephens, 'requested that the lords of the Admiralty, or general court, would give directions that he might have a true copy of the report made at the general court on the 12th of August by the committee of enquiry,' but was refused the same.

"That on the 25th Dec. 1778, the lords commissioners of the Admiralty resolved, 'That the said captain Baillie, for his misbehaviour, as stated in the report before mentioned, be removed from the offices of lieutenant-governor, one of the directors, and one of the council of Greenwich Hospital.'

"That captain Baillie applied for a copy of the order for his removal, in his letter of the 30th of January, but could not obtain the same.

"That it does not appear that the said captain Baillie ever was called, or appeared before the said board of Admiralty, or was ever heard before the said board, touching his complaints, or those made against him.

"That it appears to this committee, that the words of the charter by 'authorizing and empowering the board of Admiralty to displace, move, or suspend, any officer for his misbehaviour,' the said board could not legally suspend, or remove the said captain Baillie from the offices of lieutenant-governor, one of the directors, and one of the council of Greenwich Hospital, without imputing to him some specific charge of misbehaviour, and hearing him in his defence, neither of which necessary steps the said board appear to have taken on the present occasion.

"That besides what has already been mentioned, under the two heads of the introduction of landmen, and the misconduct of the several boards concerned in the management of Greenwich Hospital, the committee have to observe, on the alterations which have been made in the charter from the original commission, transferring to the board of Admiralty the disposal of all employments held under the Hospital, the recommendation of which was by the commission placed in the general court of commissioners. This great increase of patronage to the Admiralty, which

seems to have been the main object of the charter obtained in 1775, appears to the committee to be prejudicial to the good government of the said Hospital, in as much as it creates a sort of mutual interest and connection between those who ought to be kept entirely separate and distinct, the executive officers of the Hospital, and those who should superintend that execution, in order to come at abuses when they exist.

"That the said charter also varies from the original commission in other, and no less material circumstances, both of insertion and of omission. New powers susceptible of abuse are inserted, and the old provisions prohibiting of abuse are omitted; two circumstances, which combined, appear to this committee of a very suspicious nature. The clause added being the creation of a power to sell, alienate and exchange the estates and effects of the Hospital, and the clause omitted being a strict charge, command, injunction and requisition, that none of the said estates or effects should be diverted, used, or applied, or be in any ways applicable to any use or purpose whatsoever, other than the charitable purposes of the said Hospital, or to defray the necessary charges relating thereunto.

"The committee see no necessity for these alterations, and are of opinion that it is better, when any material changes in the property of the Hospital are intended, to have recourse to parliament for an act for such particular purpose, as was lately the case in an exchange of lands between the duke of Northumberland and Greenwich Hospital.

"That in order to remedy the abuses before-mentioned, to confine this great naval foundation to the sole object for which it was first instituted, the benefit of sea-faring men, and to restore the spirit of the original commission, from which the charter has essentially deviated, the judges be directed to prepare a Bill for rescinding the charter for incorporating the commissioners and governors of the Royal Hospital for seamen at Greenwich, bearing date the 6th of December, 1775, and for substituting a new charter in lieu thereof, restoring to the general court of commissioners and governors 'the power of recommending to the board of Admiralty all officers necessary to be employed in and for the said Hospital, with directions to the board of Admiralty to employ all such officers, accordingly, except the governor and treasurer of the said Hospital, with express provisions, that all such persons to be so recommended, and admitted into the said Hospital, as officers of the house, or otherwise, be seafaring men, or such who shall have lost their limbs, or been otherwise disabled in the sea service,' as was directed by his Majesty's commission, of the 28th of May, 1763.

"That if any exceptions to this general rule shall appear necessary, the same may be specified in the said Bill.

"That no person shall be deemed a seafaring man, and, as such, capable of being appointed an officer of the house, or of being lodged in Greenwich Hospital, unless such person shall have, *bona fide*, served four years at sea, or shall have been disabled in the sea service.

"That all women employed in the Hospital, as matrons, nurses, or otherwise, be widows of seamen.

"That none but such persons as have served as officers in the royal navy be members of the council.

"That the general court shall meet once in every month, or oftener, if there should be occasion.

"That the commissioners and governors shall in future consist of all the flag officers of his Majesty's fleet, and none other.

"That a certain number of the said flag officers shall attend by rotation, whilst they remain on shore.

"That all vacancies shall be recommended to be filled up by such of the members as shall attend the said general courts.

"That two of the flag officers, the governor, the lieutenant-governor, treasurer, auditor, and senior captain, be a court of directors, for the purposes expressed in the late commission.

"That the board of Admiralty shall, at all times, have the inspection of the books containing the proceedings of the general court, court of directors and council, and shall retain the power given them by the charter, to displace, move, or suspend any officer, or officers of the said Hospital, for his or their misbehaviour, not excepting the governor or treasurer.

"That, in consideration of captain Baillie's having been illegally removed from the office, by the board of Admiralty, and of the zeal he has uniformly shewn in the course of 17 years that he has been in the said Hospital, it is recommended to the House to address his Majesty, to confer on captain Baillie some mark of his royal favour."

After a debate, the House divided on the motion: Contents 25; Not-Contents 67.

After which, it was resolved,

1. "That nothing hath appeared in the course of this enquiry, which calls for any interposition of the legislature, with regard to the management of Greenwich Hospital, or which makes the same necessary or proper.

2. "That the Book which was referred to this Committee, intitled, 'The Case of the Royal Hospital for Seamen at Greenwich,' contains a groundless and malicious representation of the conduct of the earl of Sandwich, and others, the commissioners, directors, and officers of Greenwich Hospital, with regard to the management thereof.

3. "That it has appeared to this Committee, that the revenues of Greenwich Hospital have been considerably increased, the buildings much enlarged, and rendered more commodious, and the number of pensioners greatly augmented, during the time in which the earl of Sandwich has been the first lord of the Admiralty, who has, upon all occasions, shewn great attention and impartiality in forwarding the true end of that noble foundation."

On June 14th, the duke of Richmond moved, that the proceedings of the committee, together with the evidence, should be printed. This motion was, after a debate, rejected: Contents 18; Not-Contents 43.

For a fuller account of the debates in the House of Lords, see New Parl. Hist. vol. 20, p. 475.

In the preceding report of the proceedings in the House of Lords, I have suffered to remain several ungrammatical expressions which occur in the original publication. Capt. Baillie in his 'Solemn Appeal,' inserted some correspondence and other matter, which, though perhaps highly interesting to his irritated feelings at the time, form no part of the two Cases reported, and appear not to me to be immediately connected with them. I have therefore forbore to enlarge the bulk of the preceding voluminous report by the introduction of those particulars.

563. The Proceedings at large on the Trial of GEORGE GORDON, esq. commonly called Lord GEORGE GORDON, for High Treason, in the Court of King's-Bench, Westminster; Before the Right Hon. William Earl of Mansfield, Lord Chief Justice; Edward Willes, esq. Sir William Henry Ashhurst, knt. and Francis Buller, esq. Justices. On Monday and Tuesday, February the 5th and 6th: 21 GEORGE III. A. D. 1781.*

At the Old Bailey sessions, June, 1780, and at St. Margaret's Hill, under a special commission of oyer and terminer and gaol delivery (July 10th) were tried several persons charged with committing divers outrages which had ensued upon the presentation of the Petition of the Protestant Association. The trials generally are not adapted for insertion in this work, but the following Charge which was delivered by lord Loughborough, C. J. C. B. (afterwards earl of Rosslyn and Lord Chancellor) will not be unacceptable to the reader. I print it from the Annual Register of the year.

“ Gentlemen of the Grand Jury,

“ If you are come here totally strangers to the transactions which have lately passed in this neighbourhood, or if it were possible for any of you, who were not witnesses of them, not to have heard of the devastations that have been committed, the remnants of the flames which have been lately blazing in so many parts of the metropolis, and which must have presented themselves to you, in your way to this place, will have sufficiently declared the occasion for which you are called together.

“ His majesty's paternal care for the welfare of all his subjects, would not permit him to suffer offences so daring and so enormous to remain longer unexamined, than was legally necessary to convene a jury to enter upon the enquiry.

“ The commission under which you are assembled extends only to crimes of high treason, or of felony, charged upon persons now detained in the common gaol of this county, or who shall be detained therein between the present time and the period at which the commission will expire. It was not thought proper to blend the common business of an assize, and the examination of those offences, to the commission of which the frailty of human nature is but too liable, with crimes of so deep a guilt, and so much above the ordinary pitch of

human wickedness as those which will come under your consideration.

“ The general circumstances under which those crimes were committed, are of too great and shameful notoriety, to require a minute description; but for your information, gentlemen, whose duty it will be to consider the nature and quality of the charges imputed to such offenders as will be brought before you, it will be necessary to consider the several parts of those charges, and to observe the connection of those parts with the whole, always applying the circumstances to the particular case under consideration.

“ I therefore think it an essential part of my duty to lay before you, in one general view, a short account of those dangers from which *this kingdom* has been lately delivered. I use this expression, because it will clearly appear that the mischief devised was—not the destruction of the lives or fortunes of individuals, or of any description of men—no partial evil—but that the blow, which it has pleased Providence to avert, was aimed at the credit, the government, and the very being and constitution of this state.

“ The first remarkable circumstance to be attended to, and which naturally demands our notice earliest of any, is a vast concourse of persons assembled in St. George's Fields on the 2d of June, called together by a public advertisement, (signed in the name of a person calling himself the President of an Association) not only inviting many thousands to attend, but appointing their ensign of distinction, and prescribing the order and distribution of their march in different columns to the place of their destination. Charity induces one to believe, that in such a number, there were many went unwarily, and unconscious of any evil intended; but credulity in the extreme can scarcely induce any man to doubt, that some there were who foresaw, who intended, and who had practised to accomplish the purposes which ensued.

“ A very short time disclosed that one of the purposes which this multitude was collected to effectuate, was to overawe the legislature, to influence their deliberations, and obtain

* Taken in short-hand by Joseph Gurney.

N. B. The following report is from Mr. Gurney's 3d and 4th editions, compared with the report published by Mr. Blanchard, another short-hand writer.

the alteration of a law, by force and numbers.

" A petition was to be presented to the House of Commons, for the repeal of an act, in which the petitioners had no special interest.

" [His lordship here laid down the right of the subject, to petition. His doctrine upon this head was liberal and manly, his language clear, strong, and emphatical.]

" *To petition for the passing or repeal of any act* (said his lordship) *is the undoubted inherent birthright of every British subject*; but under the name and colour of petitioning, to assume command, and to dictate to the legislature, is the annihilation of all order and government. Fatal experience had shewn the mischief of tumultuous petitioning, in the course of that contest, in the reign of Charles the first, which ended in the overthrow of the monarchy, and the destruction of the constitution; and one of the first laws after the restoration of legal government, was a statute passed in the 13th year of Charles 2, ch. 5, enacting, that no petition to the king, or either house of parliament, for alteration of matters established by law in church or state, (unless the matter thereof be approved by three justices, or the grand jury of the county) shall be signed by more than twenty names, or delivered by more than ten persons.

" In opposition to this law, the petition in question was signed and delivered by many thousands; and in defiance of principles more ancient and more important than any positive regulations upon the subject of petitioning, the desire of that Petition was to be effected by the terror of the multitude that accompanied it through the streets, classed, arranged, and distinguished as directed by the advertisement.

" How the leaders of that multitude demeaned themselves, what was the conduct of the crowd to the members of both Houses of Parliament, it is not my intention to state. I purposely avoid stating these things, because at the same time that I point out the general complexion of the transaction, and relate general facts that are unfortunately too public and notorious, I choose to avoid every circumstance that may have a direct and immediate relation to particular persons. My purpose is to inform, not to prejudice or inflame. For this reason I feel myself obliged to pass over in silence all such circumstances as cannot, and as ought not to be treated of or expressed but in stronger language, and in more indignant terms than I choose at present to employ. Towards the evening, the two Houses of Parliament were released from the state in which they had been held for several hours. The crowd seemed to disperse. Many of the persons so assembled, it is not to be doubted, retired to their dwellings, but

some more desperate and active remained to convince the legislature, that the menaces with which they had invaded the ears of all who met them in the streets, were not fruitless; that they had not abandoned their purpose, but meant to carry it into full execution. When night fell, the houses of two foreign ministers in amity with his majesty, were attacked, and their chapels plundered and set on fire.

" If such an outrage had been committed on one of our public ministers, resident in any of those countries the most superstitious and bigotted to its established religion, what reproach would it not have cast upon that country? What indignation and abhorrence would it not have justly excited in our breasts? Upon this tolerant and enlightened land, has that reproach been brought!

" Upon the 3d of June there was a seeming quiet, *a very memorable circumstance!* for sudden tumults, when they subside, are over. To revive a tumult, evinces something of a settled influence, and something so like design, that it is impossible for the most candid mind not to conceive that there lies at the bottom a preconcerted, settled plan of operation. Sunday, the next day, a day set apart by the laws of God and man as a day of rest, and as a day not to be violated even by the labours of honest industry; in broad sun-shine, buildings and private houses in Moorfields were attacked and entered, and the furniture deliberately brought out and consumed by bonfires. *And all this was done in the view of patient magistrates!*

" Some magistrates and some individuals had indeed in the beginning of the disturbances exerted themselves, and several who had been active in the demolition of the ambassadors' houses had been committed. On Monday the mob, who had not been resisted, but had proceeded with a success which had increased their impetuosity, thought it necessary to shew that the law should not be exercised with impunity on delinquents like themselves. It was the business of Monday to destroy the houses of the magistrates, and other persons who had been instrumental in apprehending them; but these outrages, great as they were, fell far short of those committed on the Tuesday and Wednesday, which will ever remain a stain on our annals. Fresh insults of the most daring and aggravated nature, were offered to parliament, and every one, who was in London at the time, must remember, that it bore the appearance of a town taken by storm; every quarter was alarmed; neither age, nor sex, nor eminence of station, nor sanctity of character, nor even an humble though honest obscurity, were any protection against the malevolent fury and destructive rage of the lowest and worst of men.

"But it was not against individuals alone, that their operations were now directed. What has ever been in all ages, and in all countries, the last effort of the most desperate conspirators, was now their object. The jails were attacked, the felons released—men whose lives their crimes had forfeited to the justice of the law, were set loose to join their impious hands in the work.

"The city was fired in different parts. The flames were kindled in the houses most likely to spread the conflagration to distant quarters, the distillers, and other places, where the instruments of trade upon the premises were sure to afford the largest quantity of combustible matter! And in the midst of this horror and confusion, in order more effectually to prevent the extinguishing of the flames, an attempt to cut off the New River water, and an attack on the credit of the kingdom, by an attempt against the Bank of England, were made. Both these attempts were defeated, providentially defeated; but they were made under circumstances which evince that they were intended to be effectual, and which increase the satisfaction and the gratitude to Providence that every man must feel, when he recollects the fortunate circumstance of their having been deferred till that stage of the business.

"In four days, by the incredible activity of this band of furies parading the streets of the metropolis with flaming torches, 72 private houses and four public gaols were destroyed, one of them the county gaol, and that built in such a manner as to justify the idea, that it was impregnable to an armed force. Religion, the sacred name of religion, and of that purest and most peaceable system of Christianity, the PROTESTANT CHURCH, was made the profane pretext for assaulting the government, trampling upon the laws of the country, and violating the first great precept of their duty to God and to their neighbour,—the pretext only; for there is not, I am sure, in Europe, a man so weak, so uncandid, or so unjust to the character of the reformed church, as to believe, that any religious motive could by any perversion of human reason induce men to attack the magistrates, release felons, destroy the source of public credit, and lay in ashes the *capital of the PROTESTANT FAITH*!

"I have now related to you the rise and progress of that calamity, from which, by the blessing of Providence upon his majesty's efforts for our preservation, this kingdom hath been delivered—a situation unparalleled in the history of our country—no commotion ever having had a more desperate and more fatal intention. It now remains to state to you what parts of this subject will more directly call for your attention; and as it is evident from what I have said

that among the number of persons whose cases will be submitted to your consideration, there may be some who are accused with the guilt of high treason, it will be necessary and proper to state the law with respect to those species of treason under which some of the cases may probably fall. There are two species of treason applicable. To imagine or compass the death of our sovereign lord the king, is high treason. To levy war against the king within the realm, is also high treason.

"The first, that of compassing the death of the king, must be demonstrated by some overt act, as the means to effect the purpose of the heart; the fact of levying war is an overt act of this species of treason, but it is also a distinct species of treason. And as the present occasion calls more immediately for it, I must state to you more fully, in what that treason may consist.

"I am peculiarly happy, that I am enabled to state the law on the subject, not from any reasonings or deductions of my own, which are liable to error, and in which a change or inaccuracy of expression might be productive of much mischief; but from the first authority, from which my mouth only will be employed in pronouncing the law. I shall state it to you in the words of that great, able, and learned judge, Mr. Justice Foster, that true friend to the liberties of his country.

"'Every insurrection which in judgment of law is intended against the person of the king, be it to dethrone or imprison him, or to oblige him to alter his measures of government, or to remove evil counsellors from about him,—these risings all amount to levying war within the statute, whether attended with the pomp and circumstances of open war or not. And every conspiracy to levy war for these purposes, though not treason within the clause of levying war, is yet an overt-act within the other clause of compassing the king's death.

"'Insurrections in order to throw down *all* inclosures, to alter the established law, or change religion, to enhance the price of *all* labour, or to open *all* prisons—all risings in order to effect these innovations of a *public and a general armed force*, are, in construction of law, high treason, within the clause of levying war. For though they are not levelled at the person of the king, they are against *his royal majesty*; and besides, they have a direct tendency to dissolve all the bonds of society, and to destroy all property and government too, by numbers and an armed force. Insurrections likewise for redressing *national* grievances, or for the expulsion of foreigners in general, or indeed of any single nation living here under the protection of the king, or for the reformation of real or imaginary evils of a *have no special interest*,—risings to effect

public nature, and in which the insurgents these ends by force and numbers, are, by construction of law, within the clause of levying war. For they are levelled at the king's crown and royal dignity.'

" In order fully to explain this, it will be only necessary to collect, repeat, and enforce the several passages in Mr. Justice Foster, relative to this subject. It may occur that in several places mention is made of an armed force. In the very same chapter, from which I have read an extract, the learned judge mentions two remarkable cases in the latter end of the reign of queen Anne.

" ' In the cases of *Damaree* and *Purchase*, which are the last printed cases which have come in judgment on the point of constructive levying war, there was nothing given in evidence of the usual pageantry of war, no military weapons, no banners or drums, nor any regular consultation previous to the rising; and yet the want of these circumstances weighed nothing with the court, though the prisoners' counsel insisted on that matter. The number of the insurgents supplied the want of military weapons; and they were provided with axes, crows, and other tools of the like nature, proper for the mischief they intended to effect.'

" It is remarkable, that the men who were the leaders, or set on as part of that mob, likewise assembled under pretence of religion, and the false and wicked cry then was, that *the church of England was in danger*, on account of the just and humane indulgence, which, from the happy period of the Revolution, had been granted to dissenters.

" ' Upon the trial of *Damaree*, the cases referred to before, were cited at the bar, and all the judges present were of opinion, that the prisoner was guilty of the high treason charged upon him in the indictment. For here was a rising with an avowed intention to demolish all meeting-houses in general; and this intent they carried into execution as far as they were able. If the meeting-houses of Protestant dissenters had been erected and supported in defiance of all law, a rising in order to destroy such houses in general, would have fallen under the rule laid down in *Keiling*, with regard to the demolishing all bawdy-houses. But since the meeting-houses of Protestant dissenters are by the Toleration Act taken under the protection of the law, the insurrection in the present case was to be considered as a public declaration by the rabble against that act, and an attempt to render it ineffectual by numbers and open force.'

" The objects of their attack were the meeting-houses of the dissenters; they were considered by the judges to have declared themselves against the act by which the

indulgences were granted, and as attempting to render it ineffectual by numbers and open force, and on that ground Mr. Justice Foster declares the judgment to be proper; all the judges concurred in it at the time, it has been respected by posterity, and its principle is necessary for the preservation of the constitution, which we cannot but have felt the value of, in that moment when we have seen it threatened with, and in imminent danger of, immediate dissolution.

" The calendar points out a number of prisoners who may be indicted (as appears from their commitments) for burning and pulling down, or beginning to set fire to, and pull down, the King's-bench prison, the House of Correction, and nine dwelling houses within the county; others may be charged with breaking open the gaols, and releasing the prisoners; others again may be charged with extorting money from individuals, under terror of the mob, which is clearly and incontrovertibly a robbery. As some of you, gentlemen, are by your professions, and all of you undoubtedly from your rank and station, acquainted with the ordinary administration of criminal justice, it is unnecessary for me to enlarge on the subject of these felonies.

" Burning a house, or out-house, being parcel of a dwelling-house, though not contiguous, nor under the same roof, was a felony at the common law, and by statute, the benefit of clergy was taken away.

" To set fire to any house, or out-house, though it is not burnt, is made a capital felony, by 9 Geo. 1, chap. 22. And by statute 1 Geo. 1, chap. 5, called *The Riot Act*, the offence of beginning to pull down buildings, by 12, or more persons, is made a capital felony. And having mentioned the riot act, let me say a few words upon it.

" The two cases which I have stated, were very near this period, and the same pernicious principles which had been instilled into the minds of the lowest orders of the people, were kept alive by the arts of faction.

" It is not less true than remarkable, that the same seditious spirit which had artfully been instilled into the people in the latter end of queen Anne's time, had been continued to this time (the accession), and what a few years before had been miscalled a *Protestant mob*, was now a mob trained, excited, and actually employed to defeat the Protestant succession. In every mug-house, in every dark alley, and lurking corner of sedition, in this great town, artful and designing men were engaged in exciting this mob to the destruction of the constitution, and therefore this act was framed to make the beginning of mischief dangerous to the perpetrators of it. To begin to pull down any place of religious worship, certified and registered by the Act of Toler-

tion, or any dwelling-house or out-house, was made a capital felony. And any persons, to the number of twelve or more, unlawfully, riotously, and tumultuously assembled, being commanded or required to disperse by the magistrate, and continuing together for one hour after such command, are declared guilty of felony without benefit of clergy.

"But here I take this public opportunity of mentioning a fatal mistake into which many persons have fallen. It has been imagined, because the law allows an hour for the dispersion of a mob to whom the Riot-act has been read by the magistrate, the better to support the civil authority, that during that period of time, the civil power and the magistracy are disarmed, and the king's subjects, whose duty it is at all times to suppress riots, are to remain quiet and passive. No such meaning was within the view of the legislature; nor does the operation of the act warrant any such effect. The civil magistrates are left in possession of those powers which the law had given them before; if the mob collectively, or a part of it, or any individual, within and before the expiration of that hour, attempts or begins to perpetrate an outrage amounting to felony, to pull down a house, or by any other act to violate the laws, it is the duty of all present, of whatever description they may be, to endeavour to stop the mischief, and to apprehend the offender. I mention this, rather for general information, than for the particular instruction of the gentlemen whom I have now the honour of addressing, because the Riot-act I do not believe will come immediately under your consideration: fame has not reported that it was any where, or at any time, read during the late disturbances.

"In all cases of burning or pulling down buildings, the being present, aiding, abetting, and encouraging the actual actors, though there be no act proved to be done by the party himself, is a capital felony. This is a doctrine solemnly delivered lately by the judges, and I believe will never be doubted.

"Taking goods or money against the will, under the terror of a mob, is felony.

"Of all these offences you are to enquire, and true presentments make.

"The character and esteem in which the gentlemen I have now the honour of addressing are justly held by their country, render any admonition from me on the subject of your duty superfluous; in you it has long placed a confidence, nor will it, I am persuaded, on this occasion, have reason to repent it.

"I have to remind you, that it is your duty only to enquire, whether the party accused is charged with such probable* circum-

stances as to justify you in sending him to another jury, who are appointed by law to hear the evidence on both sides, and to say, whether the person charged be guilty or not of the crime imputed to him in the indictment; and if upon such trial, any advantage can be derived from the nicety or caution of the law, or any favourable circumstances appear, it will be as much the inclination, as it is the duty of the learned and reverend judges with whom I have the honour of being in commission, to state such circumstances.

"And if the laws declare them guilty, the offenders may still have recourse to that fountain of mercy, the royal breast, where justice is always tempered with clemency.

"Such is the inestimable blessing of a government founded on law, that it extends its benefits to all alike, to the guilty and the innocent. To the latter the law is a protection and a safe-guard; to the former it is not a protection, but it may be considered as a house of refuge; indeed there cannot be a greater proof of the excellence of that constitution, than by administering its benefits to all men indifferently."

"This charge having been the topic of much conversation, we submit it to the judgment of our readers. The opinions of men respecting the legal propriety of it have been various: as a piece of oratory it has been admired; but its tendency to influence and direct the jury, and inflame their passions against men, who ought all to have been supposed innocent till found guilty by their country, has been generally spoken of in terms of indignation, by those who are jealous of the rights of humanity."

Annual Register.

LORD GEORGE GORDON was apprehended on the 9th of June, upon a warrant under the hand of one of his majesty's secretaries of state for high treason, and was committed a close prisoner to the Tower.

On the first day of Michaelmas term his lordship applied to the court of King's-bench by petition, founded upon the Habeas Corpus act, to be either tried or set at liberty. A few days after in the same term, the following indictment was presented to the grand jury for the county of Middlesex, who returned it into the court of King's-bench a true bill:

"*Middlesex.* The jurors for our lord the king, upon their oath present, That George Gordon, late of the parish of Saint Mary-le-

* But as to this see Hawles's Observations on

lord Shaftsbury's Grand Jury, vol. 8, pp. 835, et seq. See also, vol. 8, p. 822, and the celebrated "Security of Englishmen's Lives," &c. ascribed to lord Sommers, and mentioned in that page.

bone, otherwise Marybone, in the county of Middlesex, esquire, commonly called lord George Gordon, being a subject of our sovereign lord George the third, by the grace of God of Great Britain, France, and Ireland, king, defender of the faith, &c. not having the fear of God before his eyes, nor weighing the duty of his allegiance, but being moved and seduced by the instigation of the devil, and entirely withdrawing the love, and true and due obedience which every subject of our said sovereign lord the king, should, and of right ought to bear towards our present sovereign lord the king, and wickedly devising and intending to disturb the peace and public tranquillity of this kingdom, on the 2nd day of June, in the 20th year of the reign of our sovereign lord the now king, at the parish of Saint Margaret, within the liberty of Westminster, in the said county of Middlesex, unlawfully, maliciously, and traitorously, did compass, imagine, and intend to raise and levy war, insurrection, and rebellion, against our said lord the king, within this kingdom of Great Britain; and to fulfil and bring to effect the said traitorous compassings, imaginations, and intentions of him the said George Gordon, he, the said George Gordon, afterwards (that is to say) on the said 2nd day of June, in the 20th year aforesaid, with force and arms, &c. at the said parish of Saint Margaret, within the liberty of Westminster, in the said county of Middlesex, with a great multitude of persons whose names are at present unknown to the jurors aforesaid, to a great number, to wit, to the number of 500 persons and upwards, armed and arrayed in a warlike manner (that is to say) with colours flying, and with clubs, bludgeons, staves, and other warlike weapons, as well offensive as defensive, being then and there unlawfully, maliciously, and traitorously assembled, and gathered together, against our said sovereign lord the king, most wickedly, maliciously, and traitorously did ordain, prepare, and levy public war against our said lord the king, his supreme and undoubted lord, contrary to the duty of his allegiance, against the peace of our said lord the king, his crown and dignity; and also against the form of the statute in such case made and provided. And the jurors aforesaid, upon their oath aforesaid, further present, That the said George Gordon, being a subject of our sovereign lord George the third, by the grace of God, of Great Britain, France and Ireland, king, defender of the faith, &c. not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, and entirely withdrawing the love and true and due obedience, which every subject of our said sovereign lord the king should and of right ought to bear towards our said present sovereign lord the king, and wickedly devising and intending to disturb the peace and public tranquillity of this kingdom; afterwards, to wit, on the said 2nd

day of June, in the 20th year of the reign of our said sovereign lord the now king, and on divers other days and times between that day and the 10th day of the same month of June, at the said parish of Saint Margaret within the liberty of Westminster in the said county of Middlesex, unlawfully, maliciously, and traitorously did compass, imagine, and intend to raise and levy war, insurrection, and rebellion against our said lord the king, within this kingdom of Great Britain, and to fulfil and bring to effect the said last mentioned traitorous compassings, imaginations, and intentions of him the said George Gordon, he the said George Gordon, on the said 2nd day of June, in the 20th year aforesaid, and on divers other days and times, between that day and the 10th day of the same month of June, with force and arms, &c. at the said parish of Saint Margaret, within the liberty of Westminster, in the said county of Middlesex, with a great multitude of persons whose names are at present unknown to the jurors aforesaid, to a great number, to wit, to the number of 200 persons and upwards, armed and arrayed in a warlike manner (that is to say) with colours flying, and with swords, clubs, bludgeons, staves, and other weapons, as well offensive as defensive, being then and there unlawfully, maliciously, and traitorously assembled and gathered together against our said present sovereign lord the king; most wickedly, maliciously, and traitorously did ordain, prepare, and levy public war against our said lord the king, his supreme and undoubted lord, contrary to the duty of his allegiance, against the peace of our said lord the king, his crown and dignity, and also against the form of the statute in such case made and provided."

On the 25th of January, 1781, the prisoner, by virtue of a Habeas Corpus, directed to the lieutenant of the Tower upon the motion of Mr. Attorney General, was brought up to the bar of the court of King's-bench, and pleaded Not Guilty to his indictment, and the Court appointed the Trial for Monday the 5th of February.

Monday, February 5, 1781.

The Court being opened and the prisoner set to the bar, the jurors returned by the sheriff were called into court:

William Atwick, of Portman-square, esq. not being a freeholder of the county of Middlesex, he was rejected as a juror.

William Feast, of the City-road, esq. and brewer, excused on account of illness.

Roger Griffin, of Islington-road, esq. challenged by the prisoner.

John Dawes, of Islington, esq. and stock broker, challenged by the prisoner.

Nathaniel Clackson, of Islington, esq. challenged by the prisoner.

Thomas Saunders, of Highgate, esq. not a freeholder.

James King, of Mortimer-street, esq. not a freeholder.

Henry Horace Hayes, of Percy-street, esq. excused by consent, both of the counsel for the crown and the prisoner.

John Peter Blaquire, of Hampstead, esq. and stock-broker, challenged by the prisoner.

Robert Vincent, of Hampstead, esq. and brewer, challenged by the crown.

Thomas Collins, of Berners-street, esq. and surveyor, sworn.

Thomas Parry, of Berners-street, esq. not a freeholder.

Henry de la Mayne, of Berners-street, esq. and wine merchant, not a freeholder.

Henry Hastings, of Queen Ann-street, esq. sworn.

James Calvert, of Old-street, esq. and vinegar merchant, challenged by the prisoner.

John Horsley, of Haberdasher's-walk, esq. challenged by the prisoner.

George Friend, of St. James's-walk, Clerkenwell, esq. and dyer, not a freeholder.

John Marshall, of Holywell-street, esq. and brewer, challenged by the prisoner.

Thomas Proctor, of Holywell-street, esq. and brewer, challenged by the prisoner.

Richard Barker, of Caroline-street, esq. not a freeholder.

William Harrison, of Lamb's Conduit-street, esq. not a freeholder.

Matthew Carrett, of Hatton-street, esq. and merchant, not a freeholder.

Thomas Brown, of Arundel-street, esq. challenged by the prisoner.

Thomas Bray, of Bedford-street, esq. challenged by the prisoner.

Edward Hulse, of Harley-street, esq. sworn.

Thomas Ahmuty, of Queen-street, esq. not a freeholder.

Barrington Buggin, of Harpur-street, merchant, not a freeholder.

Edward Pomfret, of New North-street, wine merchant, sworn.

Joseph Spackman, of Hackney, esq. not a freeholder.

Gedaliah Gatfield, of Hackney, esq. sworn.

Robert Mackey, of Hackney, esq. challenged by the crown.

Joseph Pickles, of Homerton, esq. sworn.

Cecil Pitt, of Doleston, esq. not a freeholder.

Peter Mestaer, of Bethnal-green, esq. and ship-builder, challenged by the prisoner.

Charles Digby, the younger, of Mile-end-road, esq. challenged by the prisoner.

Thomas Sayer, of Bow, esq. not a freeholder.

Edward Gordon, of Bromley, esq. and distiller, sworn.

John Milward, of Bromley, esq. and distiller, challenged by the prisoner.

William Daling, of Bromley, esq. challenged by the crown.

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John Perry, of Blackwall, esq. and ship-builder, challenged by the prisoner.

Joseph Hankey, of Blackwall, esq. and ship-builder, challenged by the prisoner.

Arthur Shakespear, of Church-street, Stepney, esq. and rope-maker, challenged by the prisoner.

Robert Buttery, of White-chapel, esq. and corn-chandler, challenged by the crown.

Thomas Flight, of Hackney, esq. challenged by the crown.

Marmaduke Peacock, of Hackney, esq. sworn.

Nathaniel Paul, of Clapton, esq. not a freeholder.

Francis Degan, of Hammersmith, esq. sworn.

James Scott, of Hammersmith, esq. challenged by the crown.

Simon Le Sage, of Hammersmith, esq. and silver-smith, sworn.

Stephen Pitt, of Kensington, esq. challenged by the prisoner.

Robert Lathrapp, of Kensington, esq. not a freeholder.

Thomas Ayliffe, of Kensington, esq. not a freeholder.

Robert Armitage, of Kensington, esq. sworn.

James Trimmer, the younger, of Old Brentford, esq. and brick-maker, challenged by the prisoner.

Thomas Bramley, of Acton, esq. challenged by the prisoner.

John Bullock, of Kensington, esq. not a freeholder.

Thomas Moore, of Kensington, esq. not a freeholder.

Edward Ellicott, of Hornsey, esq. and watch-maker, challenged by the prisoner.

Henry Adkins, of Lamb's Conduit-street, carpenter, not a freeholder.

Robert Walford, of St. James's-walk, Clerkenwell, brewer, not a freeholder.

Joseph Manwaring, of Islington, gentleman, challenged by the crown.

John Rix, of White-chapel, distiller, sworn.

LIST OF THE JURY.

Thomas Collins, of Berners-street, esq.

Henry Hastings, of Queen Anne-street, esq.

Edward Hulse, of Harley-street, esq.

Edward Pomfret, of New North-street, esq.

Gedaliah Gatfield, of Hackney, esq.

Joseph Pickles, of Homerton, esq.

Edward Gordon, of Bromley, esq.

Marmaduke Peacock, of Hackney, esq.

Francis Degan, of Hammersmith, esq.

Simon Le Sage, of Hammersmith, esq.

Robert Armitage, of Kensington, esq.

John Rix, of White-chapel, esq.

The Clerk of the Crown charged the Jury with the Prisoner.

Counsel for the Crown.—Mr. Attorney General, Mr. Solicitor General, Mr. Bearcroft, Mr. Lee, Mr. Howorth, Mr. Dunning, Mr. Norton.

Counsel for the Prisoner. Mr. Kenyon, the hon. Thomas Erskine.

Mr. Norton. May it please your lordship, and you, gentlemen of the jury, the noble prisoner at the bar, George Gordon, esq. commonly called lord George Gordon, stands indicted of high treason, in intending to levy war against his present majesty, within the kingdom of Great Britain; and, gentlemen, the indictment further states, that the prisoner, to effect this traitorous intention, did, on the 2d of June last, and at divers other times, between that day and the 10th of the same month, at the parish of St. Margaret's, within the liberty of Westminster, in this county, with a great multitude of persons, armed and arrayed in a warlike manner, with weapons offensive and defensive, and with colours flying; being then and there unlawfully and traitorously assembled, most wickedly, maliciously, and traitorously did prepare and levy public war against our sovereign lord the king, contrary to the duty of his allegiance, against the peace of our said lord the king, his crown and dignity. and against the statute in such case made and provided.

To this indictment the prisoner has pleaded that he is not guilty, and hath put himself upon his trial; we who are of counsel for the crown shall call our witnesses in support of the prosecution; and if the evidence shall prove the charge to your satisfaction, then it will be your duty, under the direction of the court, to find the prisoner guilty.

Mr. Attorney General. [Wallace.] May it please your lordship, and you gentlemen of the jury, I am also of counsel in support of this prosecution against the prisoner at the bar, which imputes to him a crime in the highest class of offences known to the law of this country—that of high treason; and the particular species of high treason you find, from the opening of the indictment, is levying war against the king within his realm.

The offence of levying war against the king within the statute of the 25th of Edward 3, is of two sorts, the one directly and immediately against the person of the king, the other, called constructive levying of war, is against the majesty of the king, as a great and numerous insurrection of the people to effect by force an alteration of the established law of the country, the redress of national grievances, or the reformation of evils real or imaginary, in which the insurgents have no particular or special interest.

It is of the latter kind of levying war with which the prisoner at the bar stands accused by this indictment.

You, gentlemen, who reside in this county, are not strangers to the occasion of this prosecution—In the month of May in the year 1778, an act of parliament* passed to repeal certain provisions affecting the Roman Ca-

tholics in this country, contained in an act of parliament made in the 11th and 12th year of king William 3.* The particular provisions which it was the object of this act to repeal were these; by the statute of king William every popish priest, exercising any part of his function in this kingdom, was liable to perpetual imprisonment; every person of the popish religion keeping a school, or taking upon himself the education, government, or boarding of youth, was liable to the same punishment. And by another part of this act, Roman Catholics were rendered incapable of inheriting or taking by devise or limitation any estates from their parents or others, unless they should take oaths and subscribe a declaration, which by their religion they could not conscientiously do, and their estates were to go immediately over to their next of kin being Protestants, and them and their families left to starve. There was another provision too which made them incapable of taking an estate by purchase.

This act containing such severe penalties could only be justified by the necessity of the case, for the salvation of the state and our religion. It is the height of severity to punish men for serving God in their own way, or employing themselves in one of the most important duties to society, the education of youth; that men shall for these reasons alone be doomed to a loathsome prison for their lives, and to the perpetual society of the most profligate and wretched of mankind, is cruel and horrid. The other part of the act was extremely severe in depriving a man of his birthright and inheritance.

The history of the times indeed does not furnish any proof of the necessity, nor afford an apology for the hardship of these provisions; an account of the commencement and progress of the act is given by a very learned divine, who was at that time a member of the House of Peers, bishop Burnet. It originated in party faction, in opposition to the court at that time. The Bill was brought into the House of Commons that the court party might reject it, and draw upon themselves the odium of a measure in favour of the Catholics, for those that brought in the Bill did not mean it should pass; they were disappointed in their view, for the court party made no opposition to it. They then wished to drop it, but they could not; upon which bishop Burnet says, they added very severe and unreasonable clauses to the Bill and sent it up to the House of Lords, in hopes that that House would reject it; in this they were disappointed too, for the House of Lords did not reject the Bill, but suffered it to pass with the severe penalties and punishments I have stated. It is too much, in my opinion, for any party or faction to stake upon their game the liberties and fortunes of others.

The Catholics submitted to this law, they

* Stat. 18 G. 3, c. 60.

* Stat. 11 and 12 W. 3, c. 4.

expected, no doubt, that parliament would see the hardships imposed upon them by these provisions, and administer redress. They made no application, and indeed the penalties and punishments appeared to every body so extremely harsh and severe, that very few prosecutions were carried on upon this act; in my own time I only remember one, which was against a person for saying mass in a house somewhere about Wapping; he was convicted, and of course doomed by the provisions of this act to perpetual imprisonment. But the Roman Catholics were still liable to private extortionary demands, which they yielded to, to avoid either prosecution, or that they might have the liberty of enjoying what had long been in their families and had descended to them as their birth-right.

This law remained in the statute book (and though seldom put in execution was sufficient to occasion perpetual alarms) till the year 1778, when an act of parliament was brought into the House of Commons to relieve his majesty's Roman Catholic subjects against the particular provisions I have stated. The propriety and justice of that measure, the circumstances attending it pretty plainly evince.

The Bill was brought in by a member of the House of Commons distinguished for his love of the civil rights of mankind, and for his firm and zealous attachment to the Protestant religion, and who besides possesses every public and private virtue that can adorn the citizen and the man. I mean sir George Savile*—it passed through the House of Commons with almost unanimity, the opposition made to it from some was not to the principle of the Bill, but that it did not go far enough in the redress; it should in the opinion of those have been extended to other penalties, for I must inform you that in the time of passing the act of king William, the Roman Catholics stood by law excluded from any share in government, from any office of trust, civil or military, and the persons of that religion performing any part of their functions, as priests or keeping of schools or educating youth, stood liable to many pecuniary penalties, and in some instances to temporary imprisonments. This was their situation at the time when these additional penalties and punishments were inflicted upon them. This repeal was not absolute and extending to all affected by the statute of king William, but was conditional, and restrained to those who should take an oath established, by that act, of the strongest assurance of their loyalty and affection to the government, and an abjuration in explicit terms of every pretender to the crown and government of this kingdom, and besides a positive renunciation of any authority of the see of Rome, in civil or temporal cases, within

this kingdom. None could receive the benefit of this repeal, who did not give the public that pledge.

Upon the passing of this act, many of the Roman Catholics of the first characters and fortunes in the kingdom, and others of all descriptions, came in, and gave the security to government, under the sanction of an oath, which the act required; no person at that time seemed dissatisfied; but in the winter following it was supposed that a Bill would be brought into parliament, to take off some penalties which were inflicted by the laws of Scotland upon the Roman Catholics of that country. And in the beginning of February were received from Edinburgh, and published in every paper, accounts of a most violent insurrection in that country, to put a stop to that measure. It appeared from these accounts that, upon the 2d of February, an insurrection happened in the city of Edinburgh, that two Roman Catholic chapels had been attacked and set on fire; that the houses of the Roman Catholics there in different parts of the town, were attacked, ransacked, and demolished; that the utmost exertions of the civil magistrate, assisted by some of the fencibles, could not suppress the tumult; nor until the provost of the city gave assurances in the most public manner, that the scheme was dropped, that no act of parliament would be applied for, respecting the Roman Catholics of Scotland, could any check be given to the violence and outrages committing to the destruction of many innocent men. This put an end to an attempt to obtain the act of parliament, conceived by some gentlemen of distinction of that country, to be a very salutary, proper, and just measure. I take notice of this insurrection in Scotland, because when I come to state to you the conduct of the prisoner at the bar, it will be found to be a very material circumstance.

Things remained for some time quiet in this country, but an association was formed, called the Protestant Association, every one of you, gentlemen, have heard of it, and where pains were taken to create a belief that the repeal of the statute of king William would be attended with immediate danger to the state, and to the Protestant religion; upon that ground it seems a petition was determined upon, and if they apprehended danger, they did right to petition; it is the inherent right of the subject to petition parliament; and whenever they imagine a case proper for the consideration of parliament, they do right to bring it before them; and I believe this petition was at one time intended to have been presented in a legal, constitutional, and orderly manner.

You will find, for I shall give you the general outlines of the business before I state the particular conduct of the prisoner, that upon the 2d of June, in consequence of public advertisements published in the news-papers, and pasted up at the corners of streets, and

* See Mr. Burke's most eloquent speech to the electors of Bristol. Burke's Works, vol. 4. p. 1. Ed. of 1801.

of hand bills distributed, there was collected together in St. George's-fields, a multitude of people, or more properly, a very large army; I believe consisting (the particulars we may hear from the witnesses) of many thousands; 20, 30, or 40,000—under the pretext of presenting a petition to parliament. Though it is the birth-right of the subject to present a petition to parliament, yet the petitioners are not to dictate to parliament, or take from parliament their deliberation and judgment upon the subject; that would tend directly to the dissolution of the constitution, and the subversion of government. . .

This body of men were arranged, according to the direction of the advertisement, into three or four divisions; the London to the right, the Scotch division to the left, and the Westminster to one part, and the Southwark division in another; one division, consisting of many many thousands, marched over London-bridge, through the city, down the Strand, and so to the House of Commons, with colours flying, distinguished by blue cockades, and making a march as regular as an army trained to it; they had bagpipes, which belonged, I fancy, to the Scotch division; in this way they marched; they arrived at the House of Commons about one o'clock; and, being joined by the other divisions, took possession of all the avenues leading to the House, and of the lobby, and it was with the utmost difficulty the members got admittance into the House; some members of each House were insulted and ill-treated by the populace, as examples, I presume, of what the rest were to expect, if the wishes of the mob were not complied with; in this situation the petition was presented, and those in the lobby were desired to withdraw. If it was a constitutional purpose, they had in coming to the House, it was answered; but they would not stir, and with great riot and confusion insisted upon a repeal of the act; the cry was, A repeal! A repeal! No Popery!—The civil power was in vain sent for to disperse them, they still kept possession; they besieged the House, they kept the members imprisoned. Thus they continued till between nine and ten at night, when the civil power, by the assistance of the military, were able to deliver the House of Commons from the disgraceful situation in which they had been to that time, and must have been confined till they had granted, as far as they could, the prayer of this petition. As soon as the House was delivered, they ordered the business to be considered, and adjourned to the Tuesday following; but the mob, not having succeeded in their purpose, and being driven from the House in the manner I have stated, immediately betook themselves to other measures; they instantly resolved to attack the chapels of the foreign ministers, which, in every civilized country, are protected and deemed sacred from insult; some of them were appre-

hended, I think about thirteen, that night or the next morning. On Saturday they paraded in different parts of the town, but I do not find that much mischief was done: on the Sunday they appeared in Moorfields, they there attacked a chapel in that neighbourhood, and the houses of many Roman Catholics, situated thereabouts, and completely demolished the houses and effects of these unfortunate people. I only give in general, an account of what they did: I am convinced many of you were eye-witnesses to what I am now stating. On the Monday, the men who were taken up were examined at sir John Fielding's: five of them were committed to Newgate: they were examined under the apprehension of a rescue from the violence that was without the door; it was with difficulty that they were conducted to Newgate by the guards; but, as soon as they were lodged there, these people made an attack upon the house of a Mr. Rainsforth, who had been active in apprehending them, and a witness against them; they made an attack too upon the house of a Mr. Maberly, who had been a witness before the magistrate; and also upon the house of sir George Savile; and they did other injury that night. The next day, being the Tuesday when the parliament was to meet again, all the parties of this army re-assembled about the House of Commons, and there continued with great riot and confusion, with shouts for A repeal, and No Popery, till the House was obliged to adjourn. Upon this their first attack was upon the house of Mr. Hyde; the offence given by Mr. Hyde, was partly his attendance at the justices upon the Monday at the examination, but principally for his activity as a magistrate in saving the life of a member of the House of Peers, the earl of Sandwich, who, in going to attend his duty, had been violently attacked by the mob. They ransacked and set fire to Mr. Hyde's house, and burnt the furniture, and totally demolished every thing they could. In this they were accompanied with their colours, for they appeared again with their flags and with their cockades. Very large parts of the mob marched to Newgate; they set fire to the keeper's house; they attacked the prison; and, in a very short time, they set at large all the prisoners; a place which for its security seemed to be equal to a prison in the centre of the earth. They afterwards attacked and demolished many houses belonging to Roman Catholics, burnt and destroyed the furniture and effects.

Upon the Wednesday they attacked and broke open the other prisons in and about this metropolis, with an exception of the Poultry Compter, and set at liberty all the prisoners; they continued their proceedings without controul or check all that night, and until some time the next morning; in that night various houses in different parts of the town were in flames at the same time; in short nothing

was expected less than general conflagration. The next day an attack was meditated upon the Bank, and I believe upon the Pay and Excise offices; happily his majesty, by his anxious care, and extraordinary and unremitting exertions, had been able to collect together a force; all the troops within a considerable distance were brought up to the metropolis, and they gave a check to the fury of the mob; this was upon the Thursday, when they were making an attempt upon the Poultry Compter. Every person I believe is convinced, that if a stop had not been then put to the outrages, the whole of this town would have been destroyed in a very short time; for though the repeal of the bill was the pretended cause, and the Roman Catholics the object at first of their violence, that distinction would soon have vanished—the reputed papist—the friend of the papist, and all those who had not the least connection with them, if in any respect obnoxious to the mob, would have suffered—It is astonishing to me, that the whole town was not destroyed, considering the number of Roman Catholics employed in our manufactories here, and others who are doomed to the most laborious employments in this town; had they interposed in defence of their innocent brethren to preserve them from ruin what must have been the consequence!—A bloody war must have taken place; and if an attack upon the houses of Protestants had been provoked, the whole of this town, even before the military could have arrived to our assistance, might have been destroyed—Before the insurrection was put an end to, there appeared strong marks of the machinations of our inveterate enemies. What was the meaning of opening the prisons—what was the intent of that attack upon the national credit of the kingdom, the Bank of England? was that upon the ground of Popery, or for the repeal of this bill? Other circumstances concurring, leave no doubt that greater designs than at first appeared were opening to the public.

Having stated in general the outlines of the violences committed during these few days, to the eternal disgrace of this country, for it can never be wiped off, it remains for me to state to you, what share the prisoner at the bar had in them; for there can be no doubt that all persons who contributed to the perpetration of them are as criminal as the very persons who committed the act, and more so, especially, if they are to be ascribed to their incitement and encouragement.

Gentlemen, you have now before you, as will appear upon the evidence, the author of all these violent and disgraceful proceedings, to whom the whole is to be imputed; an offender of such a description has not often appeared in a court of justice.

I have already stated to you the Protestant Association, but have not mentioned to you, leaving it to this stage of the business, that the prisoner was the president of that associa-

tion. I stated to you, that I have great reason to believe, and I hope it will come out before this day is over, that there were some of that association who meant no more than to lay their apprehensions before parliament, willing to leave them to their consideration and judgment, intended to present their petition in the ordinary form, and in a constitutional way, attended by very few of the petitioners. But that did not square with the views of their president. Their president had been in parliament,—he had observed the sentiments of many upon the subject of this repeal; he possibly despaired of any immediate relief being given, for certainly the subject required great consideration; the circumstances, if any, to shew danger to be apprehended from the repeal of the Bill were to be investigated. A difficulty was thrown upon the business; this Bill invited the Catholics to give a pledge of their fidelity and loyalty; this they had done upon the faith of enjoying that degree of freedom from penalties and punishments which the Act held out to them; there were besides other weighty considerations. But deliberate proceedings would not answer the purpose; the session of parliament was near expiring; the prisoner at the bar advertised for a general meeting to propose an attendance on this petition by numbers; the proposal at a general meeting, where all came that pleased without distinction, was immediately assented to; there are people who attend these places who cannot exist without the opportunity of plunder; the prisoner upon this declared that he would not present the petition unless he was attended by twenty thousand people; did such an idea ever strike any man that meant well to the peace and tranquillity of the country, that he would not present it without he was attended by twenty thousand people, and they were to be marked, they were to be distinguished by cockades, that he might know the friends of the petition, or the friends to the Protestant cause? Good God! is a cockade the test of adherence to any good cause; every man that came there with a cockade, whatever his views were, was considered as a friend to the Protestant religion; there was no other title to admission into this body, but merely having cockades in their hats—Then he gave directions, that they should be formed into divisions; a general could not make a more proper disposition of his army; the London division was to go to the right, the Scotch to the left, Westminster to one part, Southwark to the other part; and then they were to be marched off in these divisions. I dare say it struck many who were there, that this proposal must be attended with tumult and breaches of the peace at the least; the very collection of so great a number was never made in any country without doing mischief; but to take off apprehensions of that kind, he bid them recollect what the Scotch had done. By their firm conduct they had prevented the Bill

from extending to them; he recommended to this body, to twenty thousand men! the firm conduct of the Scotch, which consisted in the most violent insurrection and tumult that ever was known in that city, and in acts of violence against the Roman Catholics who committed no fault, nor applied for redress, but were taken up as men innocently suffering, and men that ought to be relieved. Is a mob not able to take the hint? It would have been too much for the prisoner to have said, Gentlemen, go and pull down all the houses of the Roman Catholics: the civil magistrates would have interposed; but it was, Recollect what the Scotch did by their firm conduct; and he added, he did not desire them to run any danger which he was not ready to share with them, and that he would meet them there; and was ready to go to the gallows for their cause; greater encouragement could not be given to a set of men; they looked up to him as a man of education and high birth; they probably did not at that time suspect the snare he was drawing them into, when he offered and pledged himself, and that he would even go to the gallows with them in the business; he published an advertisement for a meeting of these people, and though he mentioned only twenty thousand, he had an expectation of a much larger army. The advertisement I will read to you, "Protestant Association. Whereas no hall in London can contain forty thousand men, Resolved that this association do meet on Friday next."

Court. Gentlemen of the Jury; I observe some of you are taking notes, you are not to attend to any thing stated to you by the counsel unless it is afterwards proved by the witnesses.

Mr. Attorney General. I open to you from my instructions what is given me as facts, and where witnesses are put down to prove them; I am not answerable for the truth of them. God forbid that any thing I mention unsupported by proof should turn to the prejudice of the prisoner at the bar. The first resolution says, "Resolved that this association do meet on Friday next, June the 2d, in St. George's-fields, at ten o'clock in the morning; to consider of the most prudent and respectful manner of attending their petition, which will be presented the same day to the House of Commons."

Forty thousand men to meet to consider of the most prudent and respectful manner of presenting a petition, how are they to be consulted! how is their opinion to be asked! this is a disguised business.—"Resolved, for the sake of good order and regularity, that this association, on coming to the ground, do separate themselves into four divisions; to wit, the London division, the Westminster division, the Southwark division, and the Scotch division. Resolved, that the London division do take place upon the right of the ground toward Southwark; the Westminster division second; the Southwark division

third; and the Scotch division upon the left; all wearing blue cockades in their hats to distinguish themselves from the Papists, and those who approved of the late act in favour of Popery." So every man that did not wear a cockade in his hat was to be distinguished as a favourer of Popery and of the late act of parliament; and that every man who would put a cockade in his hat, be his description what it might, was to be considered as a friend to this petition; in short he was to be a friend to the purposes in view. "Resolved, that the magistrates of London, Westminster, and Southwark, are requested to attend, that their presence may over-awe and control any riotous or evil-minded persons who may wish to disturb the legal and peaceable deportment of his Majesty's Protestant subjects."—Now, gentlemen, what an insult is this upon the civil magistrates! this last paragraph adds to the mockery of the advertisement; is of a piece with the other I observed upon, in the circumstances of these people calling for a protection from the civil magistrates against those who should disturb their legal and peaceable deportment; for God's sake, who is there that durst look in the face of forty thousand men! this army wants a protection, and calls upon the magistrates for it; but what magistrates? the London, Westminster, and Southwark; of the two first none can act but in London and Westminster, and in Southwark I believe hardly one magistrate resided, and besides these men were out of the borough of Southwark, so that not one of the magistrates, if called upon to keep the peace, and to protect forty thousand men, could act at all. This advertisement was evidently to disguise the real purpose and views of the meeting.

I have already stated to you the assembly the advertisement produced on the 2d of June; the prisoner at the bar appeared at their head with his cockade; they were drawn up, and under orders, I presume, from him. Upon a person's carrying a message from the prisoner to them, the march began, that I have already stated to you; he received them, or came along with them, I do not know which, to the House of Commons, and there presented the petition. This body of men will appear to you to have been totally under his influence and management; the insult and violence at the House of Commons I have already described to you, and the force used there; no persuasion whatever, no exertion could deliver the House of Commons from the situation they were in till very late at night. He had it in his power at any moment to have done it, nay in the height of the tumult those in the lobby called to him to know whether they should quit the lobby; it was impossible to have a division until the lobby was cleared, but nothing could be done without his directions; it was not safe for him to order them to stay and obstruct the proceedings of the House in plain terms; but he

did that which was equivalent; he told them to be steady and persevere; that he would state to them the case; that he had called for a division, that there was no doubt at all that it was against them, but, if they continued in the lobby, the House could not divide; this he stated to them, not that he advised them; and then that he might not appear to have given them any directions, he left it to them to do as they pleased; it was enough to leave to them that by clearing the lobby the business would be put off, whereas they wanted it to be instantly urged on, and carried through; he was applied to over and over to desire them to go out; a word from him would have done it, and then parliament would not have been compelled to suffer the disgrace of passing an act without examination, and without forming a judgment upon the subject.

Gentlemen, you will find that he reminded them over and over of the conduct of the Scotch; he told them the civil magistrate was sent for, but they need not regard him, for he believed he was a petitioner; that the guards, if they came, would do them no hurt; in short, by his persuasions and incitements, he kept that body at the door, imprisoning the members. When the Scotch, said he, pulled down the mass-houses, they had redress. Lord Weymouth sent an assurance that the Bill should not be extended to Scotland, and shall the Scotch be better than you? No language could convey more intelligible directions to these people; if they did not succeed by the force upon the House of Commons, they were to resort to the other plan; the Scotch, said he, had redress when they pulled down the mass-houses, you know what the Scotch did by their firm conduct; this he said to them who were under his influence and command; men who would have departed if he had given them the word; who looked to him solely for instructions for their conduct, and besides he mentioned too that there was no doubt that his majesty, when he heard of the insurrections within ten miles of London, and of their flocking up to town, would send his ministers to promise a repeal: if the prisoner and his adherents were not able to accomplish their purpose at the House, the Scotch plan he had recommended was to be adopted; they instantly flew to the chapels of the ambassadors, afterwards to the houses of the Roman Catholics, and of those who had given obstruction to the mob. What became of the prisoner does not appear; but you will find, when they re-assembled again upon the Tuesday, after the violent outrages on the preceding evening, Sunday and Monday, he came to the House of Commons, with the same symbol of being their head and leader, that of a cockade, and which was a plain token of his approbation of their actions. They had all their colours flying about Palace-yard.—Without remorse, without advising them to depart peaceably, without remonstrating with them about the mischiefs they

had done; he was led off in triumph through the city of London to the Mansion-house, and other places, by a large body; this happened upon the Tuesday. On the Wednesday he sent an advertisement to the papers of a very singular nature to be inserted in the Thursday's papers, it did get into some papers, it is this;—"Lord George Gordon went in person to three different places, where the tumults were subsisting, to harangue the mob, and exhort them to a peaceable and legal deportment; he stood for a considerable time among parties of foot soldiers, accompanied by one of the London sheriffs, but all this was without effect, lord George Gordon not being able to give them any assurances that the act would be repealed." This advertisement held out to the mob, that they were to look forward to some assurances; that they were to continue their depredations till some assurance should be given, and that this was the only reason why the violences were not stopped. Did he flatter himself that he should have assurance from any quarter that this Bill would be repealed? He adds, several merchants requested lord George Gordon to sign papers that they were friends to the Protestant interest, &c.

So he states himself in his own hand-writing, that he was the person who had been, and was to be applied to, for protections; we shall shew you one of his protections granted upon the Wednesday, but nothing carries with it stronger evidence, under his own hand, that all the world looked upon him as the only person who had the government of the mob, in the depredations they were then committing; he does not say I refused them, or that I granted them, he certainly meant that others should apply in the same way for protections, it was to demonstrate that he was, and was looked upon to be the only man whose name and signature would protect them from the violence of this mob; his name did furnish a protection in one case which we shall give in evidence; he gave a protection to a person who had a Roman Catholic tenant or lodger in his house—he found his house had been threatened, and applied to the prisoner for a protection—he got one, and experienced the benefit of it.

Can any body doubt, after this evidence, that the prisoner at the bar was not the author of these disturbances, and that to his encouragement, incitement, and means, they are to be ascribed? Perhaps he will tell us, he had no other object but the repeal of this Bill; and that if other views, of a more alarming and extensive nature, mixed in the operations of the mob, they are not imputable to him; but if he had no other object than the repeal of this Bill, sure, his measure of guilt is of no ordinary size; will it be enough for him to say, I would have checked the mob in the violence of their proceedings, but I was not able to do it; that will be no excuse, if he exhorted them to begin, and look to that as

the means to procure a repeal. If he has turned out upon the public this many headed monster, to ravage and destroy, it will be no excuse to say, I wanted to check its rage and fury! he has designedly given birth to the outrage, and must stand by the consequences; it is just he should.

Gentlemen, if these facts are proved, lay your hands upon your hearts, and ask yourselves, whether to the prisoner, all that was done, is not to be imputed. It is not an accidental assistance, or encouragement, but he is the contriver of the whole. If you are satisfied of this, you will pronounce him guilty, and your verdict will teach the present and future ages this lesson, that no man, however exalted in birth, situation, or connexion, can violate the peace, the order, the government, and the laws of his country with impunity.

I shall, in order to prove the case, call some witnesses, not so many, I hope, as you may have seen in a list, which, by some means, has been published; it is not the object I know, of delivering lists of witnesses, that they should appear in the public newspapers, but you have seen a great many in a list of witnesses published—the necessity of putting down many will be obvious to you, for we had no power over the witnesses at the time their names were inserted, several are to the same fact, that if any, from accident, sickness, or any other cause, could not attend, others, in that list, might be called, for we cannot supply their places by witnesses not named in the list; it is therefore of necessity, that we have inserted so many witnesses to the same transaction, but I shall not trouble you with more than I think sufficient to establish the facts.

Gentlemen, I beg pardon for taking up so much of your time, but in a cause of such importance and expectation, it becomes my duty to be as particular in the state of the facts, materially affecting the prisoner, as it is in my power to do.

Evidence for the Crown.

William Hay sworn.

Examined by Mr. Solicitor General.

Do you know the prisoner, lord George Gordon?—Yes.

Do you remember seeing him at any time at Coachmaker's-hall?—I saw the prisoner at Coachmaker's-hall on the 7th of January, 1780.

Did you see him at different times at that meeting between the 7th of January and the 2d of June, the day the multitude went to the House of Commons?—Five or six times, but not at that place, the association——

What association?—The association called the Protestant Association, was adjourned from place to place. It was adjourned to Greenwood's rooms, in the Hay-market; to the Old Crown and Rolls, in Chancery-lane;

to the London tavern, in Bishopsgate-street; and to St. Margaret's-hall, in the borough of Southwark.

Did you see the prisoner at all or at any of those places?—Not at all, but at most of them.

Do you recollect which of them you saw him at?—I saw him at St. Margaret's-hall, at Greenwood's rooms, at the Old Crown and Rolls tavern, Chancery-lane, and at Coachmaker's-hall.

Do you remember seeing him at Coachmaker's-hall, at the last meeting, previous to their going up to the House of Commons?—I remember it very well.

Do you recollect at that time any thing said by the prisoner, and if you do, mention what it was?—It was on the 29th of May I heard, the prisoner announce to a very numerous assembly, the hall was crowded, "That the Associated Protestants (as they were called) amounted to upwards of 40,000 in number; that on Friday the 2d of June it was resolved, they should meet, at ten o'clock in the morning, in St. George's-fields, in four separate divisions or columns, arrayed or dressed in their best clothes.

Mr. Kenyon. Was it arrayed or dressed?—A. I think his words were, "to have your best clothes on, with blue cockades in your hats, as he himself should wear a blue cockade, to distinguish them from other people who were Papists or friends to Roman Catholics." His lordship gave orders how these four different bodies should take their ground, and what fields they should assemble in. I cannot charge my memory exactly with the positions of those four columns, but I think the London division were to go to the field on the right of the road.

Court. Do you at all recollect the order?—A. I cannot charge my memory.

Do you recollect any thing you heard said by the prisoner?—Not that evening; but I recollect some evenings before, at the Crown and Rolls, lord George Gordon being present, his lordship read over the preambles or certain parts of penal laws of Charles the 2d, William and Mary, and George the 2d. After reading those acts, he observed, "That by his majesty's giving his assent to the Quebec law, and the late act of parliament tolerating the Roman Catholics in England, his counsellors had brought him to that pass or situation in which James the 2d was after his abdication."

One of the Jury. Were those his lordship's words?—A. As nearly as I can recollect. He then read his majesty's coronation oath, and said "It was his opinion, that his majesty had broken that oath." He observed, that "the people in his country did not mince the matter, they spoke out, or spoke their minds freely, and avowed it to be true."

Do you remember any thing else?—I do not recollect any thing else; these are the most emphatical expressions I can charge my memory with.

You do not recollect, at present, any other inflammatory expressions made use of by lord George Gordon, either at Coachmaker's-hall, or any of the preceding meetings?—None.

Did you go to the meeting in St. George's-fields, on the 2nd of June?—I went there, but did not mix among the people.

Did you see a multitude of people gathered together there?—A vast multitude.

One of the Jury. What number do you imagine there might be?—I cannot tell; I had never seen so many together before, and could not make a calculation.

Had they any particular marks or badges?—They had all cockades, and there were banners.

Was any thing written upon the banners or the cockades?—Nothing on the cockades that I observed. On the banners I think I saw Protestant Association; and one banner I believe had No Popery! on it.

Did you see the prisoner there?—Yes. I saw him at a great distance; he was going off the field then towards the House of Commons.

Did you hear him address himself to this multitude?—I could see lord George Gordon was haranguing the people, but I was not near enough to hear what he said.

Which way did this multitude march?—I can say nothing of their marching, further than what I saw in Fleet street. I came home and saw them come through Fleet-street, and march by St. Dunstan's church, in their way to the House of Commons.

Was there a large number came that way?—Yes.

Had they the same cockades and banners?—Yes, the same cockades, and one or two of the banners.

Did you afterwards on that day come down towards the House of Commons?—I did.

Did you see a number of the same people about the House?—I did; they appeared to be the same people.

Had they the same cockades and banners?—Yes, they had.

Did you get into the lobby of the House of Commons?—I was there about three hours.

Was that filled with some of this multitude?—The lobby was crowded with them.

What was their behaviour?—Very riotous. The noise was generally occasioned by chiming of lord George Gordon's name. Lord George Gordon's name was the constant chime. The great noise appeared to me to be made by those words, Lord George Gordon.

Do you recollect their calling out at all to any of the members of the House of Commons who were in the lobby?—I remember two or three members coming into the gallery over the lobby of the House and speaking to them.

Do you remember the mob crying out to the people in the lobby?—I cannot pretend

to say, there was such great confusion and noise.

While these people were in the lobby, and you were there, did you see lord George Gordon?—I saw my lord George Gordon once in the place over the lobby.

Did you hear him say any thing at that time?—Yes. He exhorted them, "to continue stedfastly to adhere to so good and glorious a cause as their's was. He promised he would persevere in it himself, and he hoped, although there was very little expectation from the House of Commons, that they would meet with redress from their mild or gracious sovereign."

Do you recollect any thing else in particular?—I think that is the substance of every thing I heard his lordship say; I have repeated all the words that I thoroughly remember.

One of the Jury. Are you thoroughly satisfied that you have repeated the words of lord George Gordon?—I am.

Do you recollect seeing any flags at any other place in the course of the mischief which followed?—I saw one of the flags at the burning of the Fleet-prison; that flag which had the words No Popery! on it.

Could you perceive whether the person who had the flag at the Fleet-prison, was one you had seen in St. George's-fields, or about the House of Commons?—I am very clear it was the same man, for I looked at him.

Where was it you had before seen that man, you saw with the flag at the Fleet-prison?—I saw him carrying that flag in Fleet-street.

Do you mean at the time when the multitude marched to the House of Commons?—Yes; and I saw that very man at Westminster.

It was on Friday the multitude were here; were you at either the Sardinian or Bavarian ambassador's chapels?—I was at that chapel in Lincoln's-inn-fields.

At what time on Friday night were you there?—I think it was about ten o'clock.

Did you see any mischief done there?—A great deal. I was astonished at the cruelty of what I saw.

What was the cry of the people who were employed in that business?—It generally was, No Popery!

Had the persons that were doing that mischief blue cockades in their hats?—I did not see a single cockade in the chapel; I saw many with blue cockades before I got into the chapel, in the same street, Duke-street.

Did those persons form a part of the same mob that did the mischief?—They seemed to be by-standers, they stood encouraging them.

Did the people with blue cockades join with the people who were crying No Popery?—It was while I was within the chapel, I heard the cry without the chapel. The person who did all the mischief, whom I saw in the chapel, had no hat on; there were about five

or six people in the chapel, but that man was the most active.

One of the Jury. You say those that did the mischief, had no cockades in their hats?—*A.* I did not see them have any.

One of the Jury. You said those that had cockades encouraged them; what do you mean by encouraging them?—*A.* The same as at all the fires; they stood by and protected and encouraged them.

Were you present at any other fires, or the demolition of any other houses?—I was present at several of the fires.

Were you present at Mr. Langdale's?—I stood there about a quarter of an hour, I do not recollect the exact day, but it was the same day of the fire at the King's-bench, and the fire at the Fleet-market, the Fleet-prison.

Did the same cry prevail there of No Popery?—The very same, that was obvious to every body.

Do you recollect being present at any other fire?—Yes; at a public house, the corner of Lincoln's inn-fields; they brought the furniture out and burnt it.

Do you recollect any other?—Yes, I saw another house demolished in Great Queen-street, but I do not know whose house it was.

Cross-examined by Mr. Kenyon.

Pray what are you?—By trade, a printer.

Do you print on your own account, or are you a servant to any person?—I print on my own account.

I believe you have had misfortunes in the world, you were a bankrupt?—Yes.

When did you first resort to these meetings of the Protestant Association as they called themselves?—I said on the evening of the 10th of December.

Was that the first time?—Yes.

And you went, from time to time, to all the meetings that were held afterwards?—Yes, to the public meetings.

You were at several places where lord George Gordon did not attend?—Yes.

You have mentioned one place where lord George Gordon was, at Greenwood's rooms; now I desire you to recollect, and say, whether you saw him at Greenwood's rooms?—I think I saw my lord once there, and I was there once when he was not; I was there twice.

I caution you to be upon your guard.—I will; it is a very serious matter; I think lord George was once at Greenwood's rooms, and that the association was there once without his lordship.

Then you cannot speak with certainty?—Unless I look at some notes I cannot tell; I have some notes here.

Did you make them at the time?—Yes, I generally made them that evening.

Court. You may refresh your memory with them. [Looks at his notes.]—On the 21st of January, lord George Gordon was not, I find, present at Greenwood's.

Then you were mistaken in that part of your evidence?—I was mistaken.

How came you, from time to time, to make notes of what passed at these several meetings?—I shall be very free in telling you, that I had an idea then, that this would be the consequence of these meetings, I went almost purposely to take notes of them.

And you went on that account to take notes of what passed?—A curiosity at first led me there, but, when I saw what sort of people they were, I was willing to look farther after them, for I dreaded the consequence of their meetings.

How soon had you this foresight of what would happen. In the month of December you foresaw what would happen?—I did not, I said no such thing; I foresaw it on the 20th of February.

Then the first time you foresaw it was on the 20th of February?—I had foreseen the evil consequences, as far as man could, before that time, but on the 20th of February I had even written my thoughts upon it.

Then the 20th of February was the first time you began to draw your conclusions?—It was.

Then how came your notes and memorandums to have a date prior to that, you have notes so early as the 21st of January?—Without those notes, I could not come to that conclusion in my own mind about the consequences; I took notes on the 10th of December.

I must return again to the question I asked before; how came you first to take notes?—I never go to any public meeting but I have an errand; I wished to learn what those gentlemen would be at; I put down then what occurred, and then entered it down after I came home.

That is your constant course in all occurrences of life?—Yes.

Can you tell us any one occurrence of your life, where you have committed to writing every thing that passed?—I do not know any one meeting of that kind, but I have put down as much as my memory would help me to.

How many meetings of this kind have you resorted to?—I never resorted to any others of this kind.

You said you never attended any meetings respecting this kind of business, where you did not commit to writing what passed; now I want to know, what other meetings besides the Protestant Association you have attended?—I have attended a great many meetings, but I cannot pretend to recite them.

Have you, upon your oath, before God and your country, put down every thing that passed at those meetings?—I do not comprehend the nature of your question.

Have you set down any transactions at any other meetings, except those of the Protestant Association?—I have many times undoubtedly.

Tell me when and where?—The first notes

I made in my life, were in the general assembly of the church of Scotland, the very first church I was ever in, in my life.

How long is that ago?—Twenty two years ago; so early as that, and in 1765 and 1766, I took notes again.

Did you do that because you had a foresight of any ill consequences that would ensue from those meetings?—I wished to know what was going on there, or to oblige a friend to inform him what was doing.

You were not only at meetings of the Protestant Association that were advertised, but happened likewise to be casually at the chapel in Duke-street, at Mr. Langdale's, at a house-burning in Lincoln's-Inn-fields, at a house-burning in Great Queen-street, and at Newgate?—The first you mention, was the burning the Roman Catholic chapel. I was coming home; a young gentleman was with me.

Tell me his name.—M'Millan, he is here.

Where did you meet with him?—I met with him accidentally; when we had notice they were demolishing the chapel, we were I think coming by Covent-garden, and we directed our course there.

Coming home from whence?—From Westminster.

From the lobby I suppose?—Very likely so.

At the time when you were in St. George's-fields had you a blue cockade in your hat?—I never had in my life.

You say you were in the lobby of the House of Commons?—I was.

Did you go into the lobby with persons who had blue cockades in their hats?—They were all there long before me. I went down after I had dined.

Being crowded, and the place being full, still there was room for you to get in?—Scarcely. I went in with alderman Sawbridge.

What hour did you get there?—At six or seven o'clock, I believe.

When did you leave the lobby?—At nine o'clock; I looked at my watch when I came out, it was nine or perhaps ten minutes after nine.

You say, at the time you were in the lobby, there was a great riot and confusion, and you could not hear what passed there?—I heard exceeding well, too well what passed there, there was a great noise, I heard lord George Gordon's name pronounced vociferously.

The lobby is not a very large room. Were there a good number of people of the same description as yourself, that were there merely from curiosity?—I saw none such, it did not come from curiosity.

Then you were the single individual, that stood distinguished from all the rest who were there?—There were more than I there; there was that man M'Millan, and an apprentice of my own, I took them on purpose with me.

That they might be of what use?—I wanted to enquire after some particular friends; I was afraid they might be hurt, I was afraid of myself.

Being afraid of yourself, you who were not in the crowd before, nor in danger of being hurt, under ideas you might be hurt you went into the crowd in the lobby?—I was willing to see what they were about.

Which of your friends did you conceive to be in danger?—When an alarm of that kind is gone out, one cannot but have some friend in danger; I cannot charge my memory with any particular friend.

You said lord George Gordon desired they would meet at ten in the morning, and put on their best clothes, or, as you choose to introduce it in your discourse, to be arrayed in their best clothes, which was the word as far as you can recollect?—I think it was, "be sure to be in your best clothes," or "be dressed in your best clothes."

He gave orders they should be in four what —?—Divisions.

Columns you called them?—I said columns or divisions.

In St. George's-fields you were a considerable distance from lord George; how near were you to the persons who carried the two flags?—I saw one of the flags carried by a constable on my left hand; I was in the road; I did not go into the field.

The persons who carried the flags were I suppose surrounded by the rest of the multitude?—No; they were not surrounded; I remember the London division marching round, and the flags were carried but not surrounded; I saw them pass. The flag was in the front of them.

Did you accompany the London division over the bridge?—No; I came over Blackfriars bridge, and went home directly.

About what hour was that?—About two o'clock.

At what hour did you leave your house to go down to the House of Commons?—I will not positively swear to that, it was between five and six o'clock.

And you went down immediately to the lobby of the House of Commons?—I was there between six and seven o'clock.

Then all the people that had passed by were in the avenues of the House of Commons before this?—Yes.

By what good luck then did you happen to see the flag in Fleet-street? Where is your house?—Next St. Dunstan's church; I went upon the leads on purpose to see them with this Mr. M'Millan.

One of the persons you saw with a flag in Fleet-street you saw afterwards?—Yes; at the Fleet-prison and in Westminster.

Can you describe his dress?—I cannot charge my memory; it was a dress not worth minding, a very common dress.

Had he his own hair or a wig?—If I recollect he had black hair; shortish hair I think.

Was there something remarkable about his hair?—No; I do not remember any thing remarkable; he was a coarse looking man; he appeared to me like a brewer's servant in his best clothes.

How do you know a brewer's servant when he is in his best clothes from another man?—It is out of my power to describe it better than I do; he appeared to me to be such.

I ask you how, by what mark, do you distinguish a brewer's servant from another man?—There is something in a brewer's servant, in his condition of life, different from other men.

There may be for what I know; but tell me how you distinguish a brewer's servant from another man.—Be so good as to state the question again.

If there can be a doubt what the question means in any one of this audience, you shall have it repeated; you said this man was like a brewer's servant, I asked you by what mark you are able to distinguish a man to be a brewer's servant rather than of any other trade?—I think a brewer's servant's breeches, clothes, and stockings have something very distinguishing.

Tell me what in his breeches, and the cut of his coat and stockings it was by which you distinguished him?—I cannot swear to any particular mark.

Then you had no reason upon earth to use that word which came so flippant over your tongue, that he was like a brewer's servant?—I cannot answer that question if you put it to me a hundred times.

You said that one of the persons who carried one of the flags in St. George's-fields was a constable?—Yes; I said so.

How do you know he was a constable?—The man was very remarkable; his name is Payne, he is a city constable.

Pray are you of the church of England, or of the kirk of Scotland, or a Roman Catholic?—I am of the church of England.

Mr. *Att. Gen.* That question was objected to in the case of sir John Friend.*

Court. Certainly you are not permitted to ask that question.

Mr. *Att. Gen.* That was determined by four judges.

[Here Mr. Hay went away as another person was called, but was called in again.]

Mr. *Kenyon.* Let me ask you how you came to stay so long in the lobby?—A. I cannot answer this question farther, than wishing to see the end of it, or something of that sort.

What time was it you saw lord George Gordon in the balcony, at what hour?—I believe I heard his lordship once, and saw him once.

When you were afraid of all this mischief, did you impart your fears to any one of the

secretaries of state, or a civil magistrate, or any body?—I certainly did impart my fears, and my dread of the havoc making to almost every body.

But I mean long before?—I did communicate them long before.

To whom?—A gentleman; I would rather not mention the gentleman's name.

But you must do it?—I wrote my sentiments of these matters to a very particular friend, my sentiments of this association meeting.

You are asked who that particular friend is?—Mr. Butler of Lincoln's-inn.

Mr. Butler is a gentleman I have likewise the honour of knowing; Mr. Butler is I understand a Roman Catholic?—I never asked him the question.

If he is your particular friend, have you any doubt about it?—I have heard he is a Roman Catholic, I don't know that he is; I have a very high opinion of him.

So have I; but have you the least doubt of his being a Roman Catholic?—I have heard he is. I will not answer the question because I don't know it.

Mr. *William Metcalf* sworn.

Examined by Mr. *Bearcroft.*

Do you know the prisoner, lord George Gordon?—I do.

Were you at Coachmaker's-hall at any time in the course of last summer?—I was.

On what day?—I really do not know what day it was, farther than it was the day when the meeting in St. George's-fields was fixed on.

Did you see lord George Gordon there?—I did.

What number of people might be at Coachmaker's-hall?—I am not able to judge what number of people there were, but the hall was so full that I could not get in.

Did you learn what the purpose of the meeting was; by what was going forwards there?—I did not at that time; no farther than it was a meeting where lord George Gordon was to be, and I went there merely out of curiosity.

Recollect yourself, and inform the Court what passed during the time you were there?—I went to a gentleman who had some knowledge of the person who I believe lives at the hall, and by his means I got into the gallery.

Relate what passed there, particularly what fell from lord George Gordon himself?—Lord George Gordon was speaking at the time I went in; I heard him desire them to meet him in St. George's-fields; he reminded them, "that the Scotch had succeeded by unanimity, and he desired that they would likewise be unanimous; he hoped no one who had signed the Petition would be ashamed or afraid to shew himself in the cause; that he would not present the Petition, or that he begged leave to decline it," (I don't attempt to use his lordship's words, it is impossible) "unless he was met in St. George's-

* See vol. 13, p. 16.

fields by 20,000 people; and he recommended to them to come with some mark of distinction, such as a blue ribband in their hats," or words to that effect; "that they might be able to distinguish their friends from their foes," or to that purport; "that he himself would be there to meet them, and would be answerable for any of them that should be molested for meeting there; that he wished so well to the cause that he would go to the gallows in it or for it," words to that effect; I know the word "gallows" was mentioned; but the concomitant words I do not recollect, "but that he would not present the Petition of a lukewarm people." I forgot to tell your lordship, that lord George Gordon told them to "meet in four bodies in St. George's-fields;" each body I think was "to take one quarter of St. George's-fields."

Do you recollect any thing more that fell from lord George Gordon at the time you are speaking of?—I do not.

Were you in the lobby of the House of Commons on Friday the 2nd of June?—I was not there at all.

Were you about the House of Commons at all?—I was not.

Were you in St. George's-fields at the time that had been appointed?—I was.

What time did you get there?—I believe I might be there at about half past ten or eleven o'clock.

Did you see the prisoner there?—I saw him come in a coach.

Recollect yourself and give an account of what passed there, particularly what fell from lord George Gordon himself?—I did not hear a word from lord George; all that I saw was, that there was a vast number of people, and that they were occupying four different parts of the field, in four distinct bodies; there were two bodies that were forming like soldiers almost, eight or nine a-breast, a vast number of them; I did not see them so well formed in any other part as in that part.

Was there any particular distinction amongst them?—I saw blue ribbands in their hats; some had the words 'No Popery!' upon the ribband.

What number of people might there be assembled in the fields?—I imagine I speak within compass when I say there were 20,000.

Did you stay till they quitted the place?—I did not; I left them there.

Did you see any thing that struck you particularly?—I saw lord George Gordon standing surrounded by a vast number of people, and I understood him to be speaking to them, but I was not near enough to hear him speak.

You left lord George Gordon in St. George's-fields, I believe?—I cannot say whether his lordship was not gone at that time.

Did you see any thing more of the prisoner that day?—I did not.

Cross-Examined by Mr. Erskine.

You say the hall was so crowded you could

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not have got in unless by a friend?—I could not.

And you were placed in the gallery?—I got into the gallery.

Can you recollect what time of the evening it was when you got into the gallery?—I took no notice of it at the time; the only way I can judge of it is, I dined that day at Goldsmith's-hall, which is close to that hall; and after dinner we proposed to go there; I suppose it was after six o'clock.

How long did you stay?—I do not think I was there more than a quarter of an hour; if I was there a quarter of an hour it was the outside.

Where was lord George Gordon when he spoke this; was he in the chair?—At the upper end of the room.

You made use of an expression which afterwards you said you were not sure about; you used the word 'gallows'?—I said I would not be positive to the exact words in which lord George Gordon expressed himself; but that he would go to the gallows in the cause, or for the cause, or to that effect.

Are you sure of the word 'gallows'?—I am very sure he made use of that word.

You did not hear any more about what the cause was, did you?—I understood at the time, that the meeting was for the purpose of presenting the Petition.

You said you went out of curiosity, not knowing the purpose of the meeting; and then you spoke of hearing of the cause?—Yes.

John Anstruther,* esq. sworn.

Examined by Mr. Lee.

Were you at Coachmaker's-hall on the 29th of May?—I was there upon a Monday; I will not be positive as to its being the 29th of May, it was the latter end of May.

Did you see lord George Gordon there?—I did.

Did he or any person else act as president in any meeting that was then held?—I understood him to be acting as president; he appeared to me to be acting as president.

What was the substance of the conversation at that meeting?—I heard lord George Gordon say "he called that meeting for the purpose of informing them that he meant to present their Petition" (meaning the Petition of the Protestant Association) "upon the Friday following to the House of Commons; he desired them to meet him in St. George's-fields on the Friday following, for the purpose of presenting their Petition." I do not mean to be very accurate as to the words, it is impossible to recollect the very words at this distance of time; he said, "if there was one man less than twenty thousand he would not present the Petition." He declared, after stating that if there was one less than twenty thousand people he would not meet them there, "that without

* Afterwards chief justice at Calcutta.

that number he did not think that their Petition would be of consequence enough." He declared "if they were fewer they must find some other president upon that occasion; he would have no more to do with them; he recommended to them the example of the Scotch, who by their firmness had carried their point." He recommended temperance and firmness, and concluded with telling them "he did not mean them to go into any danger that he would not share; for he was ready to go to death for the Protestant cause."

Court. Was 'death' the word?—No; I rather believe 'gallows' was the word, but I will not pretend to be accurate to the very words; that was the principal purport of the speech I heard there.

Was any thing said that evening about the manner in which the people were to be distinguished when they came to St. George's-fields?—That is a circumstance I had forgot; "he desired all true Protestants and friends of the Petition to distinguish themselves by the mark of blue cockades; he told them he would meet them in St. George's-fields; and when they came there, the body that were the London Association should take the right hand, and the Scotch should take the left hand." He disposed of the other two I do not exactly remember how.

Were you present near, or about the House of Commons, upon the Friday after the day when the Petition was actually presented?—Upon the Friday after I was in the lobby of the House of Commons, and was about the House of Commons in the evening.

Did you see lord George Gordon there?—I came in by the door that goes down to the House of Lords; I came forward towards the door of the House of Commons; when I came near the door of the House of Commons, I saw lord George leaning from a gallery that looks down into the lobby of the House of Commons; it is the gallery that goes from the committee rooms to the back door: I heard lord George Gordon address the people from that place. He came out, as I understood, for the purpose of telling them what had passed in the House. He told them "that they had been called a mob within the House;" he mentioned "that the peace-officers had been called in to disperse them," I think he said "them peaceable petitioners."

One of the Jury. Did he or not say that?—I think he did, "That they had not given their reasons to the House why they had not dispersed them; he believed the peace-officers had signed the Petition. That some people had mentioned in the House something relating to calling in the military. That he hoped nobody would think of taking a step of that sort, as it would infallibly tend to create great divisions amongst his majesty's subjects." He went on stating the impropriety of calling a military force in upon such occasions in a free country. He again mentioned the Scotch, pretty much in the same

terms that he had done before, "how they by their steadiness and firmness had carried their point; that he had no doubt his majesty would send to his ministers to desire them to repeal the act, when he found the confusion it created"—or rather, which is nearer the idea, "when his majesty heard that his subjects were coming up, were flocking from miles round, and wishing its repeal." There was a great deal of confusion in the lobby; several people called to lord George Gordon, whether he desired them to disperse? "Do you desire us to go away? Does lord George Gordon desire us to go away?" He replied, "You are the best judges of what you ought to do, but I will tell you how the matter stands: the House are going to divide upon the question, whether your Petition shall be taken into consideration now or upon Tuesday. There are for taking it into consideration now, myself and six or seven others. If it is not taken into consideration now, your Petition may be lost. To-morrow the House does not meet; Monday is the king's birthday; upon Tuesday the parliament may be dissolved"—or—"prorogued," I forget which was the expression. That is almost all I heard him say. There was a good deal of confusion in the lobby; several other members attempted to speak, particularly Mr. Turner; but he was not heard. I observed some further conversation pass between lord George Gordon and the chaplain of the House, which I could not overhear.

Were the people whom lord George Gordon was then addressing, distinguished from the other people?—There was a vast number of people in the lobby of the House in blue cockades, to whom he was addressing himself.

Did you happen to be in Scotland at the time of any riots there?—I was not.

Of course you do not know what happened there?—Not from my own knowledge.

The Rev. Thomas Bowen sworn.

Examined by Mr. Howorth.

Did you officiate as chaplain in the House of Commons upon the 2d of June last?—I did.

Did you observe, in the course of that day, any uncommon concourse of people about the House of Commons, and in the lobby?—I attended the Speaker to the House; the lobby was exceedingly crowded, and the people there very clamorous. We got in without much interruption. After prayers were over, I went and sat under the gallery, not far from the door. The tumult in the lobby continued, and while the House were deliberating what measures they should take to quell it, I saw lord George Gordon frequently go to the door, and heard him repeat to the people in the lobby what different members had said in the debates. The Speaker was relating to the House, for the information of those members, who had not been present from the be-

ginning, several circumstances that had occurred.

Mr. Howorth. You will confine yourself to the expressions lord George Gordon made use of to the people in the lobby, while he was out of the House, and not relate any expressions he made use of in the House?—*A.* I saw him go to the door, and heard him say to the people, "The Speaker of the House of Commons has just said that you are all come here under a pretence of religion." And I think his lordship then added, "you are good people, your's is a good cause." Afterwards I heard him say, "Mr. Burke, member for Bristol, has said"—the door was then shut, and I heard no more. Afterwards he called out, "Mr. Rous, member for (I forget the place which he mentioned) has just moved that the civil power be sent for, but don't you mind, keep yourselves cool, be steady." At another time his lordship called out, "Lord North calls you a mob." Once, while lord George Gordon was at the door, I saw a gentleman go up to him, who seemed to me to be persuading his lordship to return to his seat.

You say 'seemed' to persuade?—I judged so from the manner of it. As soon as lord George Gordon turned round and saw who it was, he called out to the people "this is sir Michael le Fleming, he has just been speaking for you." His lordship seemed to me remarkably pleased with sir Michael, he patted or stroked his shoulder, and expressed a kind of joy in his countenance which I hardly know how to describe; it seemed to me extravagant, and if I may use the expression, childish. This is all I recollect, to this period, whilst I was sitting under the gallery of the House. When the division was called for, upon the question in the House, I withdrew. During the delay and confusion, which was occasioned by the people, who refused to quit the lobby, and by that means prevented the House from dividing, I was frequently in the adjoining room; once while I was standing near the little gallery over the lobby, I saw some gentlemen endeavouring to persuade the people to retire, one of the gentlemen asked me to speak to them; accordingly I spoke a few words; I told them they stopped their own business, and begged them to retire, I heard a person in the lobby say very distinctly, "if his lordship would come and say that it was necessary for them to go, they would go." Some time after this I went up into the eating room; while I was sitting at table lord George Gordon came into the room; soon afterwards there were scarce any person left in the room besides lord George Gordon and myself; his lordship had thrown himself into a chair near me, and seemed overcome with heat and fatigue; I thought the opportunity so favourable that I could not help telling his lordship what I had just heard from the lobby; I told him that a person there had said that "if his lordship would come and say that it was ne-

cessary for them to go, they would go," and I added as my own opinion, that I believed it depended wholly upon his lordship to disperse them; his lordship made no reply, and soon after left the room. Some time after this, I went down stairs, and seeing his lordship go towards the little gallery to address the people, I hastened to get near him; his lordship I think began with advising them, in general terms, "to be quiet and peaceable, and steady; his majesty," said his lordship, "is a gracious monarch, and when he hears that the people ten miles round (I think ten miles round was the expression) are collecting; there is no doubt but that he will send his ministers private orders to repeal the Bill." His lordship then mentioned the attempt that was made to introduce a Bill into Scotland; "the Scotch," said his lordship, "had no redress, till they pulled down the mass-houses; lord Weymouth then sent official assurances, that the act should not be extended to them, and why should they be better off than you?" Here I must observe I have a doubt upon my mind, whether his lordship said "the Scotch had no redress till they pulled down the mass-houses," or whether he said, "when the Scotch pulled down the mass-houses they had redress;" his lordship then "advised them to be quiet and peaceable, and told them to beware of evil-minded persons who would mix among them and intice them to mischief, the blame of which (I think his lordship added) would be imputed to them." It was then I think a person in the lobby asked his lordship "if it was not necessary for them to retire."

One of the Jury. Had that person a blue cockade in his hat?—*A.* I did not see his person, I only heard his voice. "I will tell you (said his lordship) how it is; the question was put," I think he said "I moved the question that your petition be taken into consideration this night. Now, says he, it was clearly against you, there can be no doubt, but I insisted upon dividing the House; no division can take place while you are there, but to go or not I leave to yourselves." As soon as his lordship had finished, he asked me, "if I would speak to the people?" I said, by no means, that his lordship was the only person who could speak to them with any good effect. His lordship then took hold of my gown, and presenting me to the people, called out, "this is the clergyman of the House of Commons. I desire you will ask him what his opinion of the Popish Bill is," and immediately urged me to give it. I replied to his lordship, with considerable warmth, that the only opinion I should give, was, that all the consequences which might arise from that night would be entirely owing to his lordship. Several gentlemen that were about us repeated my words. His lordship made no reply, and went into the House.

Had you an opportunity of observing what number of people were in the lobby, and about the House at any time during this conversation?—The lobby was full.

Did you observe any thing in the hats of the persons to whom his lordship addressed himself?—I cannot say absolutely that I did, I saw his lordship had a blue cockade.

Did you hear any general cry by the people in the lobby?—They often called out for lord George Gordon: as I followed the Speaker in, they called out, Repeal, repeal, repeal!

What was the conduct of the persons in the lobby?—They were exceedingly clamorous, I do not recollect any particular act of violence, only they made a great noise.

Was there any articulate cry?—I do not remember any.

Court. Could the members pass to and from the House?—A. I saw several members come in with blue cockades in their hats; they seemed as if they could hardly pass through the mob.

Cross-examined by Mr. Kenyon.

You saw several members with blue cockades?—I do not know that they were members; I saw several gentlemen come in to take their seats, therefore I presume they were members.

Several?—I believe there were two. I saw one take out the cockade, as soon as he came into the House, and put it into his pocket.

Do you recollect who that member was?—I do not.

Was this conversation with lord George in the gallery or the lobby?—At the gallery that looks into the lobby.

During that time there was a great tumult and noise?—Not during the time lord George was speaking.

But during the time you had that private conversation?—That was not in the gallery.

Where then was it?—It was in the kitchen, I believe it is called.

The other conversation you say was in the gallery, when he spoke to the people?—In the gallery.

Were there many people there?—Yes.

Did you see Mr. Anstruther there?—I did not.

I presume you were under some agitation of mind at the time?—I was under none till lord George spoke to me to give my opinion.

Before that time you were under no apprehensions?—No particular apprehensions.

You had your full memory about you, and now undertake to speak to the very words. You have not reduced them into writing, have you?—On Friday this happened; the next day there was an account in the papers of what happened there, in which I was mentioned; as I attended the Speaker, as his chaplain, I thought it necessary to write to the Speaker to give him an account of it, which I did in part.

When lord George told the people, that you were chaplain of the House of Commons, that put you into a considerable flurry of spirits?—In a degree it did.

Mr. Howorth. How long did you stay in

the House?—I came away with Mr. Bacon in his carriage.

At what time was the lobby cleared?—I staid till the House broke up, the passages were then quite clear.

Do you know how they came cleared?—I do not.

Did you see any soldiers there when you came away?—I saw some at some of the avenues.

Did you go away as soon as you were able?—I wished to go away much earlier. I went away after the House broke up. I had an engagement on duty that evening. I went to the door-keeper of the back stair-case, he said if I went out they would not admit me again, therefore I was obliged to stay. I was afraid to go out with my gown on.

John Cater, esq. sworn.

Examined by Mr. Dunning.

On the 2nd of June last you were in the House of Commons?—I was.

Had you any occasion to observe any thing that passed in the lobby at the time?—Yes.

What did you see or hear from the lobby on the 2d of June?—As I had the honour of being in the last parliament with the noble lord, I shall be obliged to the court for one moment's indulgence to explain my situation, out of respect to the noble prisoner. Having publicly related all that I have now to relate, in another place, and in the presence of the noble prisoner, immediately after it happened, when I could have no view of this trial, I suppose to be a reason why I have been applied to by those whose duty it is to carry on this prosecution. I hope the court and the noble prisoner will see that I am here without being officious, and free from malice or ill will, but having said this, I must take the liberty of saying, when called before a court, I shall not shrink from that evidence.

Court. There is no apology necessary, every man must give his evidence.—A. On Friday the 2d of June, as I was passing from one of the committee-rooms, while the lobby was filled with a multitude of strangers, and the House of Commons was under a question which they could not decide, as the serjeant and the officers of the House could not clear the lobby; as I was going through the passage at the top of the stair-case, where there is a rail that looks into the lobby, I heard and saw a person in the lobby who called aloud two or three times Lord George Gordon! I turned round and saw the noble prisoner near, who on hearing himself called came to the rail and looked over. I did the same close to him. The same person said, "My lord, we are ordered to clear the lobby; if your lordship wishes we should clear it, we will do it directly, and without any trouble."

One of the Jury. Was this one of the officers of the House?—A. No, a stranger. The noble prisoner replied, "I will tell you

how the case stands: I have moved to have your petition taken now into consideration. Alderman Bull and two or three more are for it, the rest are against it; therefore if you wish your petition should be taken now into consideration you may stay or do as you please." All in the lobby were silent and attentive; as soon as the noble prisoner had said what I last related they pulled off their hats, and cried, "Now, now, now." I do not recollect any thing else.

Was any thing said by you to lord George, or by lord George to you?—I recollect there was a kind of pause. The noble lord leaned over again, and said, "Would not you wish to be in the same state they are in in Scotland?" they answered "Yes, yes," and he said, "Well, well;" that is all I recollect.

Mr. Joseph Pearson sworn.

Examined by Mr. Norton.

You are door-keeper of the House of Commons?—Yes, I am.

Were you at the House of Commons on Friday the 2d of June last?—Yes.

At what time?—Between one and two o'clock.

Inform the court what you observed in the lobby at that time?—A great crowd of people, most, if not all, of whom had blue cockades in their hats.

Was there any general cry used by these people?—Yes; No Popery, No Popery! A repeal, a repeal!

How long did these persons continue in the lobby?—Till near nine o'clock at night, I believe.

What was their conduct and behaviour during the time they were in the lobby?—What I mentioned before, calling out, A Repeal, A repeal! No Popery, No Popery! When any members came in they cried out, A repeal, a repeal!

Did you observe any thing done by any of them?—No.

Did you observe the noble prisoner at the bar there?—He came to the door two or three times; I am not certain to the number of times; he told them "he should come out and let them know what was going on in the House; they had a good cause, and they had nothing to fear." Lord George Gordon came up once, and said "sir Michael le Fleming had spoke in their behalf," and "that he spoke like an angel." They crowded much upon me. I said, for God's sake, gentlemen, keep from the door. Lord George put out his hand in this manner, (waving it) and said, "Pray, gentlemen, make what room you can; your cause is good, and you have nothing to fear."

How was the passage to the House of Commons?—Very much crowded in the lobby.

You say they continued till near nine o'clock in the evening; how were they at last got out, and at what time?—I do not

know, for in my confusion and hurry I did not mark what time it was.

Thomas Baker sworn.

Examined by Mr. Attorney General.

You are the lower door-keeper of the House of Commons?—Yes.

Were you there on the 2d of June last?—Yes, from twelve o'clock.

When did the people come to the lobby?—There were a great many people in the passage when I got there.

What was their behaviour?—They were all very quiet when I went; afterwards the passage was very much crowded, so that it was difficult to make room for the members to go up to the lobby; by my endeavouring to make room for them they knew they were members, then they called out, Repeal! No Popery, No Popery!

How long did they continue in this way?—Till eight or nine o'clock.

How were they got out? Do you remember any guards coming?—Yes, they came before the lobby was cleared.

Were you there the Tuesday following?—I was.

What happened upon the Tuesday?—The crowd was all kept out on the Tuesday.

How were they kept out?—By the constables, I believe.

Did you see them in the house or street?—I did not.

Sampson Wright, esq. sworn.

Examined by Mr. Solicitor General.

You are a justice of the peace for this city?—I am.

Were you called for on the 2d of June last to the House of Lords and the House of Commons?—I was.

Relate the occasion of your coming there; what you observed; what directions you received; and how you executed them?—I first came down, between two and three o'clock; I observed a vast number of people there, but seeing no disturbance at all, I went back to dinner. I returned back to Guildhall, Westminster, at about four o'clock; as soon as I entered the Guildhall, a messenger from the House of Lords told me I was wanted there. I went with him to the House of Lords, where I received directions to clear the avenues to that House. The messenger who came from the Lords having told me the Lords were much interrupted in going to and coming from the House, I directed Smith, the court-keeper at Guildhall, to collect what constables he could, and come to me. Having received the directions I mentioned I returned to the Guildhall; I found the windows were much broken; when I entered the Guildhall I found many people running about the House as if seeking for somebody. I enquired the occasion.

That is immaterial, mention what you observed when you came to the House of Com-

mons?—There were prodigious crowds there; I never saw such a number of people collected together in my life, except upon one occasion, the coronation. I went to the Horse-guards; from thence I was directed to St. James's to get some of the military to assist. From thence I was instructed to go to the Savoy. After some time a number of the military came to the Horse-guards, and I came down with them to the House of Lords. The Lords were that moment broke up; I then went to the House of Commons, and with the guards I cleared the avenues to the House of Commons and the House of Lords.

Had you a difficulty in doing it?—Yes; and it took up a considerable time, but I effected it at last.

What time of night might it be?—I cannot speak with certainty, I think it must be past eight o'clock.

Were you there on Tuesday?—I was at Charing-cross on Tuesday.

Did you see the mob go down with any marks upon them on Tuesday?—I saw a vast many people go up in a body with colours flying on Tuesday.

Had they any thing in their hats?—Yes, blue cockades.

Cross-examined by Mr. *Kenyon*.

Do you know what the colours were?—I did not take notice.

I believe they were not properly speaking colours, but rags?—I cannot say, there was something they carried in their hands, streamers or something of that sort, but I cannot say particularly what they were.

Sampson Rainforth sworn.

Examined by Mr. *Bearcroft*.

Were you in Palace-yard on the 2d of June last?—I was at the King's-arms tavern and saw all the procession go by.

What time of day were you there?—At twelve o'clock. At about one, a party came over Westminster-bridge with blue cockades in their hats.

What number might there be?—May be 300 or thereabouts, they came across the bridge and marched directly down George-street and went into the Park.

Did they say any thing; was there any cry amongst them?—No; they were very peaceable; at about two the whole cavalcade came with flags, I do not know whether there were not bagpipes they went very orderly. A gentleman was with me, I said we will go to the lobby of the House of Commons and see what they are doing there.

Which way did the second party come?—From Charing-cross.

Which way did they march?—Towards the House of Commons.

Did you observe any ribbands in their hats?—Almost every one that walked in the pro-

cession had a blue ribband. My friend and I went to the lobby of the House of Commons; it was exceedingly full; the door of the House was open; the Speaker was not in the chair. Lord George had his cockade in his hat; he was standing in the door-way.

What sort of people were got there?—The lower sort of people; some were decently dressed.

Were they the same sort of people you saw pass?—Yes.

How long did you stay there?—I stayed about ten minutes; colonel Miles was there; he was ordering them to make a lane, and he was directing them to say as the members came past, 'Repeal the Bill! Repeal the Bill!' Then I went to see what was doing at the House of Lords; I saw a noble lord not very well treated. At about eleven o'clock in the evening a messenger brought word to the company where I was spending the evening, that the mob were burning down the Sardinian ambassador's chapel in Lincoln's-inn-fields. I proposed for us to go there. I went. I made my way into the chapel; it was not then on fire; they had torn down the organ and had made fires in the street; some were throwing the inside of the chapel out, and other people threw it into the fire; there were not above five or six people in the chapel; I immediately seized a young fellow who was in the chapel.

Mr. *Kenyon*. I must submit to the Court, whether this is evidence to affect lord George Gordon; these people were no ways connected with him?

Court. No doubt it is evidence; they are to shew that these people were illegally assembled, and committing acts of violence to the intent of forcing a repeal. You have not examined yet to the procession coming down, and the obstruction given to the members. The witness said, but he was stopped short in the examination, that he saw one of the lords ill-treated.—When I quitted the lobby, I went to see what was doing at the House of Lords; lord Mansfield came in his carriage; several of the bishops came, and were all insulted. I said to my friend, here will be an open insurrection in my opinion before this business is done.

Did you observe any thing more, at either of the two Houses of Parliament, till you went to Lincoln's-inn-fields?—Nothing more, for I stayed but a little while; I went to the Sardinian ambassador's chapel at about half after eleven o'clock; I seized one by the collar in the chapel. Mr. *Maberly*, who was along with me, joined me; we brought him almost as far out of the mob as Mr. *Carpue's*, a silk dyer's door; some of the mob said of me "damn him, that is the late high constable, knock him on the head," then they rescued the man.

What number of people do you suppose there were about the chapel?—There might be 2 or 300.

What was the cry amongst them?—No Popery! was the reigning cry amongst them.

Had they any cockades in their hats?—Most of them had blue cockades in their hats.

What became of the man you got out of the mob?—He was rescued from me by the mob, and I was in great danger of being knocked on the head. I went down to Somerset-house barracks immediately for the Guards; general Winyard, as commanding officer, gave me his assistance, and mustered 100 men with their bayonets. I desired Mr. Maberly to get some of sir John Fielding's people and seize some of the ringleaders, and I would come up with the Guards and assist. Upon my going up I desired every person in the chapel might be taken into custody. The gentlemen there thought I understood something of rioting business. I formed the soldiers round three deep, and made a prison in the street.

Were the mob dispersed?—At last they were; with the assistance of the soldiers we took up 13; we took them to the Savoy; for I believe the watch-houses would not have long existed if we had put them there. When I came back they had got some more in custody; the Russian officer was one; he was in the ambassador's house. More soldiers being brought up the mob dispersed. The next morning, which was Saturday, they were examined at sir John Fielding's office; one was discharged; the rest were remanded back to prison till Monday. On Monday they were examined again, and five of them were fully committed to Newgate.

Did you give any evidence before the justice?—No, but I attended there.

Was it attended with any ill consequences to you?—I had notice that they intended to destroy my house. I went out of it; my property was taken out into the street and burnt, and the inside of my house was destroyed.

Court. You said some lords and bishops were insulted as they went down to the House of Lords; in what manner were they insulted?—They were hissed, and I saw the mob shoving them about.

Charles Jealous sworn.

Examined by Mr. Howorth.

Were you on the 2d of June in Palace-yard?—I was.

Give an account of what you observed there; the number of persons; and in what manner they assembled themselves?—I saw a great number of people there; I had not been there long before I saw a carriage stopped; I was informed it was the bishop of Lincoln's; the wheels of that carriage were taken off, and I saw a gentleman pulled out, which they told me was the bishop of Lincoln;* they pulled off his wig and struck him in the face with it.

* Thurlow, brother to the Lord Chancellor.

Were his horses going towards the House of Lords?—Yes.

What was the cry at that time?—No Popery.

Was any other cry made use of?—I don't recollect.

In what manner did the bishop of Lincoln escape from them?—He got into a house, but whose house I do not know. I saw no more of them.

What number of persons got about his carriage do you think, and were assembled in Palace-yard at that time?—A great number.

Had they any thing in their hats?—Those that I saw pull off the bishop's wig had no cockades at all.

Were there many persons there who had?—Yes, a great many.

Patrick Macmanus sworn.

Examined by Mr. Howorth.

You were I believe in Palace-yard on the 2d of June?—I was stationed at Guildhall, in King-street.

Did you observe any number of people assemble themselves about Palace-yard and the avenues leading to the House of Commons, if you did, give an account in what manner they came there, and what their conduct was?—I was sent from Bow-street to Guildhall; I heard a noise; a gentleman ran in there, and a number of people after him, they cried out, No Popery! and Repeal the Act! Mr. Smith, the house-keeper, and I, attempted to shut the door, but could not do it, they forced it open. Mr. Smith went down stairs and brought up some broomsticks in his hand, and said we would keep them out.

Did you learn who this gentleman was who ran through?—I heard them say it was Mr. Welbore Ellis, but I did not know him.

Did you observe his carriage?—I did not see his carriage, I was in the house.

What did the people proceed to do?—They searched all the place and could not find him; they broke the back door which goes out of the hall into the passage, which they said he went through, but they could not find him; some of the windows in front of the house were broke.

David Miles sworn.

Examined by Mr. Norton.

You are a constable?—Yes.

Were you in Warwick-street on the 2d of June?—Yes; I went from the House of Commons there at past 11 o'clock; I had been home to my own house, and understood there was a mob at Warwick-street chapel; I went to count Haslang's house; the chapel was broke open before I got there.

Were you at sir John Fielding's on the Monday following?—I was; I took a man up for robbing count Haslang's chapel, by order of justice Hyde. I took him to St. James's watch-house and from thence to Bow-street; I attended the examination of this man; my

name was in the papers on Tuesday the 6th, and my house was burnt down between Tuesday the 6th and three o'clock on Wednesday the 7th.

Mr. Thomas Gates sworn.

Examined by Mr. Attorney General.

You are the city marshal?—I am.

Do you recollect any disturbances in the city of London on Sunday the 4th of June?—I recollect a disturbance on both Sunday and Monday the 4th and 5th of June. On the 4th it was in Whites-alley, Moorfields, it was at a Roman Catholic chapel.

Were there any houses destroyed?—Yes, three houses were destroyed there.

Were they the houses of Roman Catholics?—I believe they were; they were reputed so.

What was the cry?—No Popery!

What was done upon the Monday?

Mr. Kenyon. I shall not permit improper questions to be asked without objecting to them; this is not connected with the business of Friday, it is a different overt act; it is in a different county.

Attorney General. After proving an overt act in one county I may give evidence of one in another.

Mr. Kenyon. I object to it, because it is irregular; not for fear of the consequences to my client.

Attorney General. I submit to the court, that after the incitement we have proved, whether the business was all done on Saturday night, or continued for several days, it is evidence to be received—it was the same cry.

Court. No doubt you are at liberty to give in evidence every thing which shews that the mob, so assembled, on the 2d of June, had a general intent, by terror and acts of violence, to force a repeal of the law. That does not affect the prisoner till you make him accessory and privy to it; but every circumstance that tends to shew their intent you may give in evidence. If you give evidence of an overt act in the county where it is laid, you may to be sure give evidence of an overt act in another county,* and you have done it already, for you began with an overt act in the county of Surry. We cannot adjourn in this case at all.† I wonder you don't rather confine your examination to acts of violence at the very time, on the 2d of June, upon the members of both Houses of Parliament.

Had the people any cockades?—They had blue cockades.

What was done upon the Monday?—They

had not completely finished the business they were about, they assembled again to pull up the floors and demolish the walls.

What was done on the Tuesday?—They had fired the gaol of Newgate, the Fleet, Mr. Langdale's, and several other houses.

Were they the houses of reputed Roman Catholics?—They were.

They set fire to the gaols?—Yes, and delivered all the prisoners.

What was done the next day?—They met a repulse the next day.

What was the cry, at all these times, when they pulled down these houses?—No Popery.

Court. You said the cry was No Popery, do you mean to confine that to one day, or was it every day?—A. That cry continued every day till the soldiers fired at them.

William Hyde, esq. sworn.

Examined by Mr. Howorth.

You are a justice of the peace for this county?—Yes.

Were you on the 2d of June observing the conduct of the people at the foreign ministers' chapels?—Yes; I was in Warwick-street on Friday at about 12 o'clock at night; when I came down to Warwick-street I saw a vast number of people with cockades in their hats; I went with a party of soldiers to secure as many of the rioters as I possibly could; as soon as I came to the front of the house I saw a man bringing something out belonging to the chapel. I struck at him, I knocked him down, and sent him to the watch-house.

Was the chapel destroyed?—All the inside of it was.

Was any cry made use of by the people you saw assembled there with cockades?—Yes, Down with it! No Popery!

What force had you to disperse this mob?—About 20 soldiers.

Do you remember, on the Sunday evening following, being called upon to act any where as a magistrate?—I was called upon, on the Sunday evening, to go to Lincoln's-inn-fields, there were a number of people demolishing the remainder of that chapel.

What number of persons did you observe there?—Some hundreds or thousands.

Did you observe whether they had any cockades?—I cannot take upon me to say.

What did you observe on the Monday?—I was at Warwick-street chapel on the Monday; information came to me, that they were going to destroy sir George Savile's house; I set out; there were a vast number of people with cockades in their hats, the horse guards immediately came into the square, I went at the head of them, and with a great deal to do we drove the people away.

Was any general cry made use of by the people at sir George Savile's?—Yes, Down with it! No Popery!

Do you recollect on the Tuesday, the 6th of June, being called upon any where?—On Tuesday the 6th of June I met some of my

* See East's Pleas of the Crown, chap. 2, s. 61, 65; and in this Collection the Cases of sir Henry Vane, vol. 6. Sir Richard Grahme, lord Preston, vol. 12. Sir William Parkyns, vol. 13. Dammaree, vol. 16. Purchase, vol. 15. Willis, vol. 15. Deacon, vol. 18.

† As to this, see the Cases of Hardy and Horne Tooke in 1794, and of Stone in 1796.

brother magistrates at Westminster; my station was fixed at Charing-cross. While I was there I was informed a vast number of people had come with flags, and stopped all the avenues to both Houses of Parliament. I found several coaches were stopped in Parliament-street, and several in Palace-yard; some they wrote upon No Popery, others they would not let go along at any rate. I immediately set off to acquaint some more magistrates, who were in the neighbourhood; I then went to call out the horse and foot guards; when we came into Palace-yard we saw several coaches stopped by the mob; we drove the mob away, and the coaches went peaceably along.

Do you know to whom those coaches belonged?—No; while we were in Palace-yard clearing the way, information was brought that many coaches were stopped in coming to the House; I set out to clear Parliament-street several times; at last a gentleman came and said "Lord Sandwich was killed or lay dying in Parliament-street; that he was murdered or near it, or would be before we could arrive." We set off directly; at the end of Parliament-street we found lord Sandwich's carriage broke, and his lordship was cut upon the left side of his head.

Court. Was that done by part of this multitude?—*A.* By part of the mob.

In what state did you find him?—The mob was about his lordship; he was cut on the head, and the glasses of the chariot were broke; I asked his lordship which way he would please to go, he said home; I conducted him home.

What force had you with you at that time?—I suppose a dozen or fourteen of the light-horse; after conducting his lordship home we came back again to Parliament-street, where the coaches as usual were stopped; we cleared the street as well as we could, and got into Palace-yard again.

Had those persons about lord Sandwich's coach any cockades in their hats?—They had blue cockades in their hats.

Was there any cry made use of by these people?—In Parliament-street the cry was No Popery!

Did you observe that this multitude, who assembled on Tuesday, had any thing in their hands?—At first they had no weapons; there were flags flying, they were shouting and making a noise, and crying No Popery! In the beginning of the afternoon, or about three or four o'clock, they got some weapons.

What weapons?—New faggot sticks, oak sticks, the bark of which had been peeled off; this was on Tuesday the 6th of June.

What number of these people were there thus assembled?—I suppose some thousands.

In consequence of this conduct of your's, was any thing done to your house?—My house in St. Martin's-street was pulled down on Tuesday, and on Wednesday my house at Islington was pulled down.

Cross-examined by Mr. Kenyon.

You were not present when lord Sandwich was stopped, and his carriage broken?—I was not.

You knew nothing of the parties who did that?—No.

Attorney General. You found lord Sandwich in the hands of the mob?—*A.* I did; one man, a resolute impudent fellow, had a stick with a large head, with a leather apron or something twisted round the top of it, he said "if he did not murder him then, he would before he had done with him."

Mr. Kenyon. Who that man was you do not know?—*A.* I do not, my attention was to his lordship.

Henry Lord Porchester sworn.

Examined by Mr. *Attorney General.*

Was your lordship at the House of Commons on the 2d of June last?—I was.

Was there a riot at the House?—There was.

Did you observe any thing in the hats of the rioters?—Yes, blue cockades.

Did your lordship observe, whether the prisoner had or not a blue cockade that day?—I did not see the prisoner that day but in the House of Commons. I shall wish, if I may be permitted, to ask of the Court—

Court. It is not worth while to lose a minute about it, for several of the witnesses have said they saw him with a blue cockade.

One of the Jury. Had lord George Gordon a blue cockade on Tuesday the 6th?—*A.* I only saw the prisoner in the House.

Court. No matter where; did you see him with a blue cockade on the Tuesday?—*A.* I certainly did in the House.

John Lucy sworn.

Examined by Mr. *Norton.*

Were you in Palace-yard on Tuesday the 6th of June?—I was.

At what time?—Between four and five o'clock in the afternoon.

What did you observe there?—A very large mob.

Had they any thing in their hats?—Some had blue cockades, but I had not one in my hat.

Was there any general cry amongst them?—The cry of No Popery!

Did you see them have any flag?—I saw three flags.

Do you know any of the persons who carried those flags?—Yes, one James Jackson. As soon as justice Hyde had ordered the horse to ride amongst the mob to disperse them in Palace-yard, then Jackson hoisted the flag, and said "to Hyde's house a-hoy," for them to destroy it because Mr. Hyde had ordered the horse to ride amongst the mob. Jackson carried a black and red flag, he proceeded in front of the mob, and was followed by some hundreds of people to justice Hyde's

house. I went to Mr. Hyde's house and saw James Jackson there with the same flag, and I saw the goods thrown out of Mr. Hyde's house.

How long did the mob stay there?—Near an hour I believe.

What was done afterwards?—After the goods were thrown into the street and burnt, James Jackson waved his flag and walked backwards and forwards in St. Martin's-street, and then cried out "a-hoy for Newgate;" the mob followed him in great numbers to Newgate to let out the prisoners, I saw him afterwards at Newgate, and I saw him inside Mr. Akerman's parlour at the window, with the flag in his hand.*

Was Newgate burnt?—It was. I was one of the Protestant Association; I knew this James Jackson to be a very desperate young fellow.

Barnard Turner, esq. sworn.

Examined by Mr. Howorth.

Mr. Kenyon. What business are you?—*A.* A sugar refiner.

Mr. Howorth. You will please to inform the Court of the disturbances on the Wednesday night which fell within your observation?—*A.* On Wednesday evening, about six or seven o'clock, the London Military Association, which I had the honour to command, marched to Broad-street, to disperse a mob which was then destroying a Mr. Donovan's house. We came in sight of Mr. Donovan's house, and saw a very large mob were taking out the furniture from Mr. Donovan's house, and burning it in the street before the house; we halted a little before we came to them, and I, as commanding officer of that detachment, used all the arguments I could to disperse them without force, but I found it ineffectual, and we were afterwards obliged to fire; after firing for four or five minutes, the mob dispersed, and some prisoners were taken in Mr. Donovan's house; afterwards the Association marched down to St. Catherine's, where some of the mob were destroying the house of one Lebart; the rest of Wednesday evening and Thursday morning, the Association were employed in marching after the mob, wherever they heard they were assembled, and dispersing them on Thursday, about six or seven o'clock in the morning, the Association were dismissed for that time.

Was there any general cry made use of by the persons concerned in the destruction of these houses?—The general cry I observed was, "No Popery, no Popery! Down with the Papists," and expressions of that kind.

Mention to the jury the several places which you observed destroyed on the Wed-

nesday night and Thursday morning?—We saw the house of Mr. Mulliner in the Poultry attacked, but the guards had dispersed that mob before the Association assembled. We saw besides, the fire at Mr. Donovan's, the destruction of Lebart's house, and several fires at a distance; that of Mr. Langdale's, the distiller, at Holborn-bridge, the toll-houses, and the King's-bench prison. All those fires we saw from different parts of the town when we were upon duty.

Did you observe whether the mob had any thing in their hands?—Some had iron bars, some had spokes of wheels, and some few had cutlasses. There were one or two old pieces of fire-arms among the mob, at Mr. Donovan's house; but they were chiefly armed with bludgeons, spokes of wheels, and iron bars.

Did you observe whether these persons had any cockades in their hats?—A great number of blue cockades were worn all Wednesday evening.

Did you see in Cheapside, either that night or next morning, a considerable number of people?—The Association assembled at the Paul's-head, about six in the evening. In marching down from thence to the Mansion-house, the part of Cheapside and the Poultry we marched through, were so full of the mob, that it was with difficulty we got through.

Had those persons any cockades in their hats?—Many of them had, but that assembly were not armed in the manner those persons assembled at Mr. Donovan's house were.

Was any cry then among them?—The general cry was, "No Popery! Down with the Papists!"

Richard Pond sworn.

Examined by Mr. Attorney General.

Look at that paper [handing it to the witness] is the name to that, the signature of the prisoner at the bar, lord George Gordon?—I saw a person sign it, who I was told was his lordship.

Have you seen the same person since?—I do not recollect that I have.

Look round the court and see if the person is present who signed it?—That is the person [pointing to lord George Gordon.]

Why did you apply to him?—I thought it might have the effect to obtain a security to my house.

Did it obtain that security to your house?—That I cannot say.

Did you produce it on any occasion?—I did to the mob.

Was your house pulled down?—It was not.

What was the ground of your application about your house?—I was informed by some neighbours, that my house was upon the list amongst others which were intended to be pulled down.

Were you any way connected with the Roman Catholics?—The house was inhabited by one of that religion.

* James Jackson was tried at the Old-Bailey in June session, for being concerned in the demolition of Mr. Akerman's house, of which he was convicted, and was executed. See the Sessions-paper of the preceding mayoralty, No. 416, page 615.

Inhabited, or a lodger*?—It is a house I have upon lease; the person who inhabits it has a lease under me, he is my under tenant.

[The paper read; it was literally as follows:]

“All true friends to Protestants I hope will particular and do no injury to the property of any true Protestant, as I am well assured the proprietor of this house is a staunch and worthy friend to the cause. G. GORDON.”

Cross-examined by Mr. Kenyon.

Where was lord George Gordon when that paper was signed by him?—In a coach near the place.

Was there not one of the magistrates in the coach with him, Mr. Pugh, the sheriff?—Yes, Mr. Pugh I can swear to.

Did you bring that paper ready written and produce it to his lordship?—I did.

And you told him it would be of use to you if he would sign it?—I did.

On what day of the week was it?—I believe on Wednesday.

He was in the coach with sheriff Pugh; you took the paper to him ready written; you told him you thought it would be of use to you, if he would sign it, and in compliance with your request he signed it?—Yes, he did.

Do you know whether he read it or not?—That I cannot positively say.

How came that piece of paper out of your hands?—Upon the application of Mr. White and Mr. Alderman Wilkes.

John Dingwall sworn.

Examined by Mr. Bearcroft.

Do you know lord George Gordon?—Yes, I do.

Did you ever see him write?—Never.

Upon your oath did you never see him write?—Never to my knowledge; I never saw him subscribe his name in my life, nor I never received a letter from him.

Will you take upon you to say you never saw him write any thing?—Not to my knowledge.

Did you ever see him write any thing but his name?—To my knowledge I never saw him write.

Do you mean to say to the best of your recollection and belief you never saw him write?—To the best of my recollection and belief I never saw him write.

Nor had any correspondence with him?—None that I know of.

Cross-examined by Mr. Erskine.

Though you have had no correspondence in writing with lord George Gordon, yet you are well acquainted with him?—Yes, but I never had any business with him.

How long have you been acquainted with lord George Gordon?—From his birth.

* So in Orig.

Did you see lord George Gordon at any time, and how long before this meeting that took place in St. George's-fields?—I saw him the night before the meeting in May.

Do you recollect whether lord George Gordon, that night in May, said any thing to you upon the subject of this business?

Mr. *Att. Gen.* What lord George Gordon said, may be evidence against himself, but cannot be evidence for him.

Court. Unless it is connected with the time that they have spoken of at Coach-maker's-hall, or St. George's-fields.

Mr. *Erskine.* It is connected with that particular time. I submit to your lordship, that I have a right to put this question, whether or no he saw lord George Gordon the night before the 29th of May, and whether lord George Gordon said any thing to him upon the subject of that meeting.

Court. The distinction is this. If you call him to the meeting upon the 29th, they having given evidence of what he said at that meeting, you may shew the whole connexion of what he said there besides, but you cannot go into evidence relating to the day before.

Mr. *Kenyon.* The meeting which was held in St. George's-fields on the 2nd of June, either was or was not legally assembled; the motives for which they assembled, if lord George Gordon was the assembler of it, will go a great way to shew whether they were legally assembled or not. If assembled for purposes hostile to the laws, it was illegal; but if lord George Gordon conceived it constitutional to go up with it, with a considerable number of persons, and if he had assigned the reason why he was so to go up, that it was to remove the imputation that he was carrying up a petition with forged names to it, I submit to your lordship, that whatever the motives were, it constitutes either criminality or guilt, or absolves him from the guilt with which he is charged; therefore I humbly conceive, that if lord George Gordon can demonstrate to the satisfaction of your lordship and the jury, what the motives were which induced him to take the people there, it will go a great way, not only in extenuation of his offence, but will totally to extirpate the crime.

Court. There cannot be a doubt of it—his motive cannot be proved by his own private declaration.

Mr. *Erskine.* Your lordship was pleased to observe to me that I was going to a time antecedent to the time put; your lordship will remember Mr. Hay, the first witness on the part of the crown, has spoken to the expressions of lord George Gordon, as early as the February before; and these are declarations subsequent to that, and it seems an extraordinary thing that a man should be called up to condemn lord George Gordon for words he has spoken, and that another man, who has heard him speak words subsequent to that period, shall not be permitted to explain that.

Your lordship said it was a time antecedent—I conceive it was not antecedent, because evidence has been given of expressions of his lordship's antecedent to that. I am now speaking of the 29th of May, and Hay speaks of December, January, and February.

Court. Not of any particular expressions he made use of previous to the 29th of May.—It makes no difference whether it is precedent or subsequent, he cannot give evidence of his motives by his own private declarations.

[Mr. Metcalf gave into court Extracts from the Journals of the House of Commons, of the progress through the House of the act of parliament to repeal part of the Act of the 11th and 12th of William 3.]

Mr. Attorney General. Call general Skene.

Mr. Kenyon. My lord, I understand the witness now called, is to be examined to prove there were riots in Scotland; I object to the receiving such testimony.

Mr. Attorney General. The example lord George Gordon held out to them is the very riot in Scotland.

Mr. Kenyon. If the legislature found this was contrary to the sense of the people in Scotland, they did wisely perhaps in complying with the wishes of the people. It is the duty of governors, in general, to comply with the sense of the governed. Any riot that may have happened in Scotland, I submit to your lordship, cannot be proved; it would be an eternal disgrace upon government if it should be proved that the legislature gave way to riots in Scotland. Your lordship will recollect the language of the witnesses: lord George Gordon exhorted the people to be temperate and firm; that the people in Scotland had by such means prevailed upon the legislature not to extend the laws to that country.

Mr. Erskine. I submit to your lordship, all the witnesses that have spoken upon what lord George Gordon said with respect to this business in Scotland, have said he desired them to be firm and temperate, for by that means their brethren in Scotland had redress from parliament, but it cannot be mentioned in this court, without an eternal disgrace to the legislature, that that redress was given to them because of those riots, which are supposed to have existed in Scotland, which riots have not been proved to exist, and which ought not to be proved to exist, because they have no relation to the present enquiry, unless the gentlemen on the other side can shew that lord George Gordon had desired the people here to burn houses as the mob did in Scotland; therefore I conceive it is impossible to be brought home as evidence in this cause.

Court. The counsel for the crown do not mean to impute the demolition of the mass-houses in Scotland to lord George Gordon. I understand the evidence offered is with a view to shew, that the speech which is attributed to lord George Gordon related to a fact which had existence; for some of the witnesses have

told us that lord George Gordon said the Scotch had no redress till they pulled down the mass-houses.

Mr. Erskine. Who pulled down the mass-houses? will it be shewn that the Protestant Association pulled down these mass-houses? Lord George Gordon addressing himself to the Protestant Association in England, mentioned the firmness and unanimity of his brethren of the Protestant Association in Scotland. Will any witness attempt to prove that the Protestant Association in Scotland were ever guilty of such riots?

Mr. Solicitor General. The question is, whether we are to give evidence of the destruction of these mass-houses, of which lord George Gordon has spoken in express terms? The question now is not, as to the operation and force of that evidence. The prisoner's language is, that in Scotland some mass-houses were destroyed; that must have a meaning. The single question is, whether we are not at liberty to prove that the mass-houses were destroyed?

Court. They have given in evidence, by two or three witnesses, that when those people were assembled together, the example of the Scotch had been held forth, and it is delivered in different expressions; one says he told them, "the Scotch by their firmness and steadiness had carried their point, and he had no doubt but when his majesty heard his subjects were flocking from miles around he would send to his ministers to repeal the act;" in another place, he says, "the Scotch carried their point by their firmness," and more particularly the evidence of Mr. Bowen is expressly this, "there was an attempt to introduce a bill for Scotland—that the Scotch had no redress till they pulled down the mass-houses," and there are two or three other allusions, to understand which it is absolutely necessary to know what the fact was; it is not imputed to any particular person, but the fact is, that the Scotch pulled down the mass-houses, and there has not any bill been brought into parliament including them in it.

General Skene sworn.

Examined by Mr. Attorney General.

Were you at Edinburgh in 1779?—I was.

Was there any insurrection or disturbance in that city then?—There was; there was a mob there.

What did the mob do?—They pulled down a house belonging to a person called bishop Hay.

Was it a Roman Catholic's?—Yes; and they burnt what they called the chapel.

Did they do any more?—Not that I know of.

Do you know what was the cry, or how they were appeased?—They wanted to pull down Popery.

Do you know how they were appeased?—I cannot say; I ordered troops from all quar-

ters to march into town, which I believe was the cause of their being appeased.

Cross-examined by Mr. *Kenyon*.

You did not see this house or the chapel burnt down, did you?—No, I did not see that house or chapel burnt.

Hugh Scott, esq. sworn.

Examined by Mr. *Lee*.

Did you happen to be in Edinburgh in 1779?—I was.

Were there any riots or disturbances there, upon any account?—There were.

When?—In the beginning of the year 1779, I believe, but I do not remember the exact date.

What did the people do that assembled together there?—I cannot say I saw them proceed to do any violence, or commit any outrages, but according to common report and information.

You must not mention any thing you don't yourself know; did you see what was done?—No; I saw no act of the mob with my own eyes.

Robert Grierson sworn.

Examined by Mr. *Howorth*.

I understand you are a servant to the duke of Buccleugh?—I am.

Were you at Edinburgh in the month of February, 1779?—I was.

Was there any riot or tumult in Edinburgh at the time?—There was.

Give an account of what you saw the rioters do?—I saw them set fire to a house and burn it.

What house was it?—A chapel.

What sort of a chapel, a Protestant or a Roman Catholic?—I don't know; I believe it was a Roman Catholic chapel.

What was the cry or call of the mob?—I don't know; I was not nigh the mob, I was two hundred yards off.

Was it a great mob?—There were a great many.

Did they do any thing besides burning that chapel; did they burn a house?—Not that I know of.

Do you know Mr. Hay's house?—No.

Was it what they call bishop Hay's house?—I believe he lived in that house.

Cross-examined by Mr. *Kenyon*.

The house was on fire when you first saw it?—Yes; it was.

Who set it on fire, you don't know?—No.

Nor do you know that it was a chapel, only somebody told you so?—Yes.

Mr. *Attorney General*. Was the mob there at the time?—A. Yes, it was.

William M'Kenzie sworn.

Examined by Mr. *Dunning*.

Were you in Scotland in the beginning of the year 1779?—Yes.

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Were you at Edinburgh?—Yes.

Did you see any mischief done there to any Roman Catholics?—Yes.

What was the mischief, and by whom was it done?—They set the Papist chapel on fire.

Did you see what kind of people it was, by whom it was set on fire, did you see it set on fire?—No; I saw it burning.

Was there any mob about it at the time?—Yes; there was a mob.

Did you hear them say any thing?—No.

Did you hear any cry among them?—No.

Mr. *Attorney General*. My lord, I have evidence to prove the destruction of all the gaols about this town and the number of private houses that were demolished, but I believe I need not trouble the court with evidence of it, it is so notorious.

Court. Some of the witnesses have spoke of all the gaols I believe.

Mr. *Attorney General*. I shall call no more witnesses.

FOR THE PRISONER.

Mr. *Kenyon*. Gentlemen of the Jury; The counsel for the prosecution having stopped in this stage of the business, giving as a reason for not producing more witnesses, that they are afraid of tiring out the patience of the court and the jury, it is the misfortune of the prisoner to make his defence at that period of the day, when the attention of the court and the jury must be, in some measure, exhausted. There are other difficulties which he also labours under; for, upon this occasion, I, who am assigned, by the court, to be one of his counsel, confess myself to be a person very little versed in the criminal courts; I never yet stood as a counsel for a person who had so great a stake put in hazard; and therefore, gentlemen, in addressing you for him, I stand as a person in very considerable agitation of mind for the consequences which may happen through my defects.

When persons are accused of actions of great enormity, one is apt to look round about one to see what the motives were that could induce the parties so to act; the prisoner at the bar stands before you a member of one of the most considerable families in this country. At the time when this conduct is imputed to him, he was a member of the legislature; he stood in a situation which he was not likely to better by throwing the country into convulsions. A person that stood in the situation he stood in, could not make his prospect better than in seeing the affairs of the country conducted under legal government; and if he thought any inroads had been made upon those laws which the wisdom of our ancestors had enacted, it was his business to bring about the repeal of those laws, to redress those grievances, by proper legal means, and not by causing a revolt in this country. This being the case, and as his conduct may be imputed to good or bad motives, it seems

reasonable, and humanity will induce you to impute it to proper, rather than improper motives, the noble prisoner being, as I have said, a man standing in a situation who had every thing to expect so long as law prevailed; but nothing to expect when anarchy was substituted in the place of law.

The crime imputed to the noble prisoner is, that he being a liege subject of the king, had levied war against the king. The crime is imputed to him under an act of parliament enacted for the wisest purpose, that crimes of this very enormous nature should not depend upon loose construction; but that men, in their journey through life, might, by looking upon the statute, see what the plan of their duty was, might see what the rocks were upon which they were not to run; and might see, in the plain words of the statute, what they were to do, and what to avoid. The Attorney General has told you, very properly, that the crime which he meant to impute to him was not a crime against the person of the king, but that it was a constructive treason. Gentlemen, I have only to lament, that there is such a phrase in the law as constructive treason. At the time when the law was enacted, I verily believe the legislature had it not in their contemplation, that the words constructive treason would find their way into the courts at Westminster; but however, so it seems, the law is; for so it seems, upon some certain occasions, judges have decided.

The offence (when it comes to be more particularly described) which is imputed to the prisoner is, that he had levied war by collecting together a numerous assembly to effect, by violence, an alteration of a law, and procure a redress of grievances; and in order that Mr. Attorney General might get your inclinations to run before the evidence he gave, and that he might be in possession of that which ought never to be roused upon these occasions, namely, the passions of those who are to try the cause; he, in terms of great aggravation, compared with the evidence that has been given, stated to you, that the whole city might have been burnt; that there was great reason to believe this had been concerted by our foreign enemies; that they mixed in this business; and that, therefore, the Bank was to be attacked, the public credit sapped, and every thing thrown into confusion, and we to be delivered up, bound neck and heels, an easy prey to our enemies abroad. I dare say, he did not mean to do what was improper; but, surely, it was most improper. In businesses of this kind it is not the duty of an advocate, in stating his case to a jury, to enhance the crime beyond the degree of guilt it will fairly bear when the evidence is produced before you: and if any thing has been said beyond the fair import of the evidence, it has not been well said, by the counsel who conducts the prosecution for the crown.

Gentlemen, the other part of his speech was confined in stating to you the evidence which he meant to give: but, gentlemen, in stating that evidence, I wish he had not used some of the phrases which he did use. I wish, when he spoke of the multitude collected together, he had not called them an army; I wish, when he spoke of them in other parts of his speech, he had not compared them to armies, talked of their being led in triumph, and supposed they had gone arrayed in military form, to bring about this redress of grievances, which he supposed was, and which was perhaps to a certain extent, the intent of their meeting.

Several witnesses have been called; you have observed the manner in which they have given their evidence, and attended to the effect of it. The first was William Hay; he has stated to you the several meetings at which lord George Gordon was: and when he came to correct himself, upon the cross-examination, it appeared he had over-stated it; for he was forced at last to admit that lord George never had, to his knowledge, been in Greenwood's room. How he came to have been in a situation to give evidence, is not disclosed to you. He appears to have been at all the meetings, at more than lord George Gordon was at;—that he was in the lobby of the House of Commons; in the chapel at Duke-street; at the burning of the Fleet; at the chapel in Moorfields; and that he was in Great Queen-street. What the motives were, which led him there, I do not know. But this I know; it has ascertained one fact, and a pretty important fact in this case; that at every and all of these places there were persons who had nothing to do with lord George Gordon; there were officious persons who crowded into the business; increased, if they did not make the crowd, which was at many of these places.

He tells you, that the people who got together in St. George's-fields were "arrayed," as he calls it, in their best clothes. Now, why the word "arrayed" got into his mouth, I do not know; except he had been told, that if people came there arrayed in a military manner, it considerably enhanced their guilt. He told you also, that the people marched in "columns;" you will observe again another military word: he was upon his cross-examination asked whether lord George Gordon desired they should march in columns or divisions; he admitted the language he used was divisions: why then should he vary from the conversation or directions of the prisoner he was giving evidence against? If it was done to give a different colour to the transaction, and the phrase is so differenced as not to give the colour on the side of mercy, which a man speaking in the case of blood ought to give, I impute it as misbehaviour to that witness. He tells you, that at one of the meetings at the Crown and Rolls, (and he is the single person who speaks to it) lord George

Gordon said, "that by the king's assenting to the Quebec Bill, his majesty, or his counselors, had brought him to that pass to which king James the 2nd was brought after his abdication." Now, could a man of sense possibly use these words? How was he like king James the 2nd after his abdication? had his majesty abdicated the government? was not he in possession of the throne? was he not in possession of all the force of the country? How was it possible to conceive that the noble person at the bar then could use such language? When witnesses come singly to state facts which never existed, it is impossible, perhaps, to prove that those words might not pass. But if one travels into the field of probability, and if you see the whole of their evidence is improbable, and they supported by no other witnesses, then the great improbability on the one side, opposed to the unsupported evidence of such a witness on the other, is sufficient to get rid of the evidence of that witness. Was it not possible that other witnesses might be called, supposing this witness spoke true, to confirm his testimony?—he does not state the transaction he speaks of, to have passed in a corner, where nobody was present, but in a room where a great multitude of witnesses were present; witnesses, who were accessible by the persons employed by the crown, and the great list of witnesses which have been talked of by the Attorney General, to the amount of 170, shews, that those who were concerned in this prosecution for the crown have not been negligent in it, but have got together those from all quarters who they thought could speak to the business.

When I state this witness, hesitating and stammering as he did in some part of his evidence, and standing unsupported in parts in which he might have been supported if his testimony was true, for there were parts of his evidence which were not likely to slip out of the memories of other people. I have a right to conclude that he is speaking that which is not the truth of the case. Why did he make notes upon this occasion? He said he always does, yet never made memorandums but once, and that 20 years ago, in one place. Who was the person to whom he made a communication of this? To one person only, a man whose respectability I admit, but whose inclination must be known, because he is stated to be a Roman Catholic. Gentlemen, he tells you, that he went home from St. George's-fields; that he went over Blackfriars-bridge, and went to his house, and in that house at first, he told me, he staid till he went down to the lobby in the evening:—However, in the former part of his evidence he had mentioned a fact which passed in Fleet-street; it was necessary for him indeed to reconcile the different parts of the evidence, to bring himself out of the house before the time he went down to the lobby, for he admitted the crowd came by a long time before. You recollect, he said he

saw the flags in Fleet-street; therefore in order that he might be consistent (and I did not choose to wrangle with him upon the occasion, though it certainly was not exactly correspondent with the evidence he first gave, for he said he went over Blackfriars-bridge, and was not out of his house till he went down to the lobby) it seems he was out of his house, upon the leads of St. Dunstan's church, and saw this vast cavalcade of people, to the amount of 30,000, and was able to distinguish one man so as to know that the man he saw afterwards with the flag at the House of Commons, was the very man he saw with the flag in Fleet-street.

Here I must refer to the probability of the case; if juries are to believe witnesses, merely because they will swear to facts, juries are become of little use indeed. Those who are acquainted with the profession see it, and lament when they see it, that there is no fact whatever, that witnesses may not be brought up to prove. It is for juries, therefore, to discriminate, to judge between the probable and the improbable, to judge by comparison of the testimony he gives, with the probability of the case, and to form their judgment whether that which he says is true. Juries become of no use if they are to believe it because a witness swears it; they have to lay aside their judgment, and only make use of the faculty of hearing and speaking, and the whole is done. But that is not their province; they are to exercise their judgments; they are to winnow the evidence, and get rid of that which is the chaff; and are only to abide by that which informs their sober judgment, and enables them to say, that here deciding upon the life of a fellow citizen we cannot mistake; we see this man has probability added to his testimony; we see that he is supported by other witnesses. Upon this part of the evidence, I conceive, that can never be said to be the case.

When he is brought down to the lobby of the House of Commons, you recollect he told you at first there was great confusion there: yet in the midst of that confusion, this man is enabled to go through a long detail of what passed, circumstantially, minutely, and in the words in which it is given: and yet, gentlemen, when he has made the most of it, what is it his testimony proves? "That lord George Gordon only exhorted them to adhere to so good a cause, that he himself would persevere in it:" and he said, "that though he had no great expectations from the House of Commons, yet that they would meet with redress from their mild and gracious sovereign." Were they then not to have redress from the House of Commons? How does this consist with the hypothesis on the other side? The House of Commons were to be coerced to do whatever he should dictate to them. But he tells them, "If the House will not do it for you, you must apply to the king and his ministers." Is this the language of the man

who intended in the moment that the House of Commons were collected together, that they should by force and violence be influenced to come to a vote, should do that, which, as one branch of the legislature, they could not achieve?

Gentlemen, he found afterwards that it was necessary, if he could, to couple these parties with those he had seen in St. George's-fields, and when he was asked after the parties about the House of Commons, and stopping up the avenues of the House, how he knew they were the same persons; did he know any of them? He said, he only saw they had the same flags, and that one of the men he had seen was the man who carried the flag in Fleet-street. I have before observed upon that, you will recollect the station he was in, when he had the view of that man in Fleet-street, and you will, if you can, believe he carried his ideas of this man, one man selected from 30,000, and having the ideas of that man's face in his mind, he was able, when he came to the House of Commons, to see that man, out of 100 or 200 that he had so happily fixed upon in Fleet-street.

This witness then says he went to the Sardinian ambassador's chapel, and he would have you believe that the persons doing the mischief there were part of the company who were collected in St. George's-fields. But were they so? Did he know any of them?—Did he see any of the actors in the business? Yes; they were a banditti of boys, not any one of them having a cockade. I beg you will bear it in your minds, because it was possible, and is probable, that men of another description were those that did that business. If it shall appear in the sequel of the cause, that that was the case, even from the testimony of this witness—a witness not much inclined for the defendant; yet he may be pressed into the service of the prisoner at the bar. Gentlemen, he tells you there was one person who did the principal mischief at that chapel. He does not tell you that that one man had any badges belonging to the Association he had seen in St. George's-fields; he did not say that man had a cockade; that man certainly was a man of a different description from those that met Lord George Gordon in St. George's-fields, or the counsel for the crown would have proved who he was. But the witness says there was a multitude there. What did they do? They seemingly, says the witness, protected them. I do not know what seemingly protecting is; but this I know, that a witness well inclined to a prosecution will construe every light action into a seeming; when you are to decide you cannot anchor upon such evidence as that; it is impossible to say that conveys any information to your mind; therefore, it seems to me, that the whole of what this witness says cannot be looked upon to be important in this case.

Gentlemen, as I said before, he might have been supported if the facts that he speaks of

were true, and who the witnesses were that might have supported his testimony, might have been learnt by the examination of the man himself; for he states to you, that M'Millan, by name, and another person, walked with him from the lobby of the House of Commons through the whole detail of this business, seeing what he saw, and judging of those occurrences he states to you. Why is nor M'Millan called? Is not M'Millan here? The witness tells you he is down in the hall. Why is he not called? Is it that intelligence may be withheld from you? Is it that a witness, suspicious in himself, and speaking suspiciously, ought not to be supported? Is it that the case is to stand or fall by that suspicious testimony? Or is it because this witness, if called, would have ripped up the case told by his principal, and therefore the learned conductor of the prosecution durst not call him, because he would have stated such contradictions, and imputed such flagrant falsities to the account given by Hay, as would not only have taken from Hay all credit, but would in the outset of the case have stained the prosecution.

The second witness who is called to you is William Metcalf: he states to you that he was at Coachmaker's-hall; and the great matter to affect the noble prisoner, I presume, is, that he happened to be there called to the chair; that he was the president of the meeting, and he said "the Scotch had succeeded by unanimity;" the voice of the people was against the wishes of individuals, and the wisdom of the legislature yielded to the voice of the people, not to the force and violence of the people, but to the wishes of the people.—He desired, therefore, that the same kind of arguments might prevail here. As to the wisdom of the act of repeal, I shall say nothing: I am as great a friend to toleration as any man that ever addressed a jury. All I can say upon that subject is, that good men and wise men possibly entertain different opinions. "He tells you the Scotch had succeeded by unanimity; he desired, if he was to do any thing for them, that they would be unanimous upon the subject; and he said that those who had signed the petition neither need be afraid nor ashamed to shew that they had signed it, and to appear at the House; and that he would not present the petition, or begged leave to decline it, unless he was met by 20,000 people in St. George's-fields. He recommended that they should have some mark of distinction, and that he would answer for any that should be molested; that he wished so well to the cause, that he would go to the gallows for it." The other honourable gentleman called afterwards, said he would either go the gallows for it, or to death for it.

If this matter is capable of explanation, and shall be explained hereafter to your satisfaction, much as the stress was that was laid upon the words, I am sure, in your sober judgment, they will not weigh a feather; and hav-

ing stated the words, it is proper I should accompany the poison with the antidote. If it should come out, that at this very meeting at the hall, there was a contrariety of opinion in the persons there, whether an act of parliament was in force, or not, which act prohibited persons, above the number of twenty, carrying any petition to the legislature; that a gentleman there, of the profession of the law, was of opinion that that was a subsisting law; and that, therefore, the parties who went up might be involved in the penalties of that law; the prisoner's language arose from a difference of opinion on that subject.—Speaking on the sudden, I conceive that that is not a subsisting law. Persons who read that statute, and the Bill of Rights upon the Revolution, will, perhaps, find, that one of the articles of the Bill of Rights was levelled at that law; as we learn from the Bill of Rights, that it is the birthright of subjects of this country to petition the legislature; and if they do it in a peaceable manner, whether signed by 20, or 200, the number makes no difference. Supposing I should be mistaken, yet that point stands very remote from this case, and at a distance from the question; the degree of guilt imputed to the prisoner; for, by that act, a misdemeanor, perhaps, might be introduced, and the party might say, I am so clear upon the subject, I will run the risk of committing the misdemeanor; but does it from thence follow, that lord George Gordon had the most distant allusion to that which followed afterwards, and is now imputed to him as guilt of this enormous size, that he is guilty of high-treason? Your imagination must outrun what the witnesses have said; and must, by conjecture and inference, in a case of blood, make out that kind of charge which this evidence has not fixed upon the prisoner.

Gentlemen, the next witness that was called,—I ask your pardon for going through the evidence; but I have much anxiety for the cause, and choose to omit nothing material—Mr. Anstruther states, that he saw lord George Gordon at Coachmaker's-hall; he understood he was acting as president; "he desired the parties to meet him at St. George's-fields; assuring them, that unless there were 20,000 people, he would not present the Petition;" he says, very honourably and candidly, that, at this distance of time, considering the variety of conversations by different parties there, that it was impossible for him to recollect the words of the speaker; he says, the prisoner "recommended following the example of the Scotch, who, by perseverance, had carried their point; and he recommended to them temperance upon the subject." That being stated to you by an attentive witness, a man of sense, and of a considerable station in life, I have no doubt he states truly what did pass, and states all that materially did pass; the same witness speaks to what passed in the House of Commons on the Friday following; he speaks to all the

conversation which lord George Gordon held when he was leaning over the rails, and talking to the parties who were in the lobby below; and that when they asked him whether they should go away, he told them, "that they were the judges; I'll tell you how the matter stands: the House is going to divide upon the question, whether your Petition shall be taken into consideration now, or upon Tuesday; there are for taking it into consideration now, myself, and six or seven others; if not, your Petition may be lost; tomorrow the House does not sit, Monday is the king's birth-day, and Tuesday, possibly, the parliament may be prorogued." Now, gentlemen, this he tells you was all that passed when lord George Gordon addressed them over the rails; and here I wish you would recollect this evidence, bear it in your mind, and see how far all that is recollected by this witness, and all I shall presently state to you to be recollected by another witness, comports with the testimony of the next witness, the rev. Mr. Bowen.

Mr. Bowen states to you that he was in the gallery, that he saw lord George Gordon frequently go in and out of the House, that one of the parties asked him whether it was necessary that they should go or not; that he told them in the language Mr. Anstruther mentioned; that he told them in what situation the business was, and left them to judge whether they would go or not. But this witness went further, and told you that his lordship stated to them, "that an attempt had been made to introduce the bill into Scotland; that the Scotch had no redress, till they pulled down the mass-houses; that lord Weymouth sent official assurances that the act should not be extended to them; and why should the Scotch be in a better condition than we?" Here again, upon words extremely important in this case, you are left to believe that this is so upon the testimony of a single witness. Mr. Anstruther they called to you, who was present when all this passed. Mr. Cater was called, who was also in the lobby, and heard what passed. Neither of these witnesses have stated to you any conversation of the kind; nor out of the great multitude who were there, men of all colours and descriptions, who might easily have been found, the door-keepers of the House, who were in a situation where it was impossible that any thing could be said in the lobby, but what they might hear, and at a time when silence was occasioned by his lordship's speaking to them. I say here again, upon a very important part of the case, you are left to decide upon the credit of a single witness.

The observation which I before made to you upon this sort of evidence, will apply to this part of the case. It is enough for me to observe, that in the most important parts of this case, as far as you have hitherto travelled in the cause, the counsel for the crown have chosen to leave the most important parts of

the case not only not supported by more than one witness, but not attempted to be supported by a second witness: it is not because a second witness might not be called, if the matter was true; but it is because no industry whatever could induce other witnesses to come to swear in the same language. I do not wonder that parties are not extremely accurate in their recollection of what passed on that day: it was a day of tumult and confusion; a day of much agitation of mind, undoubtedly; and that this gentleman at that time was frightened, that his mind was agitated, that he conceived things which perhaps never passed; and that conception being once got into his mind, he has not been able to erase the ideas from his mind since. I can only say that this is possible; and if you put him in a situation in which his mind was agitated, you put him in a situation where you cannot decide upon the impressions he received, when he is giving evidence against a man standing in the situation of the prisoner, who has so much at stake.

The next witness was Mr. Cater; he states, in the same manner Mr. Anstruther does, what passed in the lobby of the House; he tells you of the very conversation which accompanied that Mr. Bowen spoke to; namely, lord George Gordon talking to them about their going or not going away; the very words which were concomitant to those words about the mass-houses in Scotland; and yet not one word did he recollect of that aggravating kind of language.

The three door-keepers are called; the question is not put to one of them, because the gentlemen knew what they would say: (for undoubtedly their evidence has been canvassed backwards and forwards before, and put upon paper, otherwise the duty of the officers of the crown has not been done) yet not one of these witnesses has been brought to state to you, that that obnoxious conversation, which Mr. Bowen states, was held by lord George Gordon at the time.

Gentlemen, the testimony of some of the other witnesses has introduced into the lobby, persons who state themselves not to be connected with lord George Gordon; as that testimony has introduced some, it is not improbable but many others, of the like description, were there; it is not only probable that that was the case, but the testimony of subsequent witnesses state, beyond all controversy, that was the case; for Mr. Rainforth, the next witness whose name meets my eye, states, that the person who was there, urgent for the repeal, was a man of a very different description to any of those who accompanied lord George Gordon, a colonel Miles. Will any man state, that colonel Miles was one of the Protestant Association? Was he not, notoriously, a man of a different description? yet he was the person who harangued, as Mr. Rainforth calls it, the mob, in the lobby of the House of Commons; and who called out,

"Repeal, repeal!" and who seems the very soul of that meeting so got together. What then does this prove? not that the persons under lord George Gordon's controul, but men of a very different description, and under the controul of persons of a very different description, held that conversation in the lobby which has been imputed to lord George Gordon as criminal; and yet lord George Gordon is now, by inference, intendment, suspicion and conjecture, to be made answerable for that guilt which is specifically, by witnesses, attributed to, and fastened upon other men.

Gentlemen, much pains has been used in order to shew, that the members of two of the bodies of the legislature were interrupted in their journey down, to attend the national business, by persons brought together, for that ill purpose, by lord George Gordon. In the first place, no interruption of the kind is proved by any body but one witness; you are told that Mr. Welbore Ellis was interrupted; why was not he here? he was here; why not called to prove it true? Was it not possible to bring the bishop of Lincoln here? yet none of these persons are called. A person is called to tell you, somebody told him, he had been told by another, that the bishop of Lincoln was obliged to go out of his chariot, and his wheels were taken off. It is not fair; I do not impute blame to the Attorney General; for his candour is equal to his abilities; when I say that, I state him high indeed; but it is not fair, in a case of this kind, by telling a story, and wishing the jury should believe it because the witness believed it, but not knew it, that the jury should believe, and have it once impressed in their minds, at an hour when their minds are harassed out, and all attention asleep; when it is difficult for the most attentive to distinguish what is material from what is not material; and yet it is by evidence of this kind, and this kind only, that a very important, possibly the most important feature in this cause, is to be laid before you. In one instance only, is any thing of the kind, by legal evidence, imputed: and that was the case of lord Sandwich; which was, I observed, with some eagerness, asked after; and how is that proved? Mr. Hyde, the justice of peace, says, that when he came there, lord Sandwich was hurt in his chariot; the witness did not tell you by whom he was hurt; but there were parties there with blue cockades; and persons there not with the badges of those in St. George's-fields; but men of totally another description; men not with that mark by which you are told the Protestant Association were to be distinguished, they had red and black flags; they were men of another description; it is possible they might be, it is probable they were, a different set of people; it is certain they might be; they had not those badges which discriminated the other.

This, I think, is the whole of the evidence which has been laid before you on the behalf of the crown; and if, upon this evi-

dence alone, you were to retire to consider of your verdict, dispensing justice with mercy, going upon sober, solid, and sure ground, giving your verdict in a manner for which your minds will never upbraid you, where you could never ask yourselves whether you had gone upon conjecture or certainty, I conceive you would think it much too much, upon evidence of such kind, to impute to a person who stood, prior to this time, in a situation that little called for suspicion upon him, who stood in a situation having every thing to expect from good government, nothing to get by things being thrown into confusion, anarchy and rebellion. Upon such evidence, I should think you would conceive it too much to draw conclusions against him which must lead to the infliction of the last punishment, which must be the case if high treason is imputed to him.

I cannot forbear relying much upon that which has not been proved by the other side. Does it appear, after the many prosecutions that were commenced, that one single individual, connected with lord George, or belonging to that association which he was president of, has ever been found obnoxious to the laws of the country?—Has criminal guilt been fastened on any of them? Has one of them been indicted? Has one of them been put in hazard? Has a crime been imputed to them, legally in a court of justice? Gentlemen, it has not; active and anxious as the officers of the crown have been; and it became them well, as far as they could, to investigate enormities of the kind, that have been so feelingly, and I wish I could not say, in rather an aggravated manner, stated to you; it was their duty to drag the offender from the corner in which he lay concealed, to bare his head in the face of justice, and punish him if he is guilty; yet all that anxiety, conducted by great abilities, has not been able to impute a crime to any one man of the denomination of those lord George Gordon was the head of; if that is so, permit me to submit to you the case upon which I stand. I admit that there were enormities committed of so gross, so flagrant a kind, as to be a reproach to the country; that punishment ought, and did tread upon the heels of the offenders; that it is impossible for eloquence much superior to mine, for imaginations much more lively than mine, to paint these enormities in too high colours. But it may be supposed, that when a multitude of people, not a mob of people, were got together, for good, at least, not for illegal purposes, at least not for traitorous purposes, for that is enough for me, not for traitorous purposes, if you can suppose that other people, of much worse principles, and having much worse designs to achieve, availing themselves of the meeting of the Association, did get together from all corners of the town, and formed that banditti represented to be at the Sardinian ambassador's

chapel, and perpetrated the conflagrations that happened—How is this to be imputed to lord George Gordon? The Attorney General tells you, if a man turns out a wild beast, he is guilty of murder, if a man is killed by it. I deny it; it is not the law of the land, nor the law of humanity. If a man turns a wild beast into a room, where death must necessarily ensue, no doubt he is as guilty as if a man shot into a crowd: but where a beast is turned out, and the probable consequences will not be that death will ensue, then is the crime to be imputed to him? it never has been, there is not a decision, not a dictum upon the point. I have looked into the place from which the Attorney General supposes he got his doctrine. But suppose it was so, for God's sake how does that bear upon this point? Was lord George Gordon's Association this wild beast? If he had a tame beast in his hand, and another taking occasion from the tame beast being brought there, lets out a wild beast, will the Attorney General say that he that leads the tame beast in his hand is to be answerable because another person opens a place and lets out a tyger or hyæna? In the name of common humanity, and common sense, I call upon the counsel for the prosecution to press the point. I know they will not: if they should, the law would fail them, and humanity would fail them also. I know they will not state it, because it is not the law of the land.

Lord George Gordon was the president of a Protestant Association; an act had passed which gave offence, right or wrong I will not say; perhaps my opinion may be it gave causeless ground of offence: but God forbid, that because I differ with men in opinions, that therefore I am to treat them as traitors to the laws of their country. It is the happiness of our nation that our laws are not like the laws of the Medes and Persians; they are subject to revision, and to be discussed and decided upon soberly: and it is not only the province of Englishmen, but their duty, if they think there are laws which press upon legal liberty, or if there are laws which improperly tolerate men whose principles are hostile to the constitution, to petition for a review of such laws. I do not say that that is the case of the law which gave rise to the Association; but if they think so, they have a right to ask parliament, that the matter should be reviewed; that it should be soberly discussed, and after discussion, should be decided upon; and if the wisdom of parliament think it ought to be repealed, they have a right to ask for the repeal.

With these principles, which I never will disavow, which no man will state to you to be unconstitutional principles, this Association met; and after some time, for they had an existence long before lord George Gordon was called in; but thinking well of him from his character, I presume, being a man of blameless life and conversation, a man not

mixing in the vices of this age, a man irreproachable in his moral and religious walk too—they thought that having such a man at their head would give weight to their deliberations, and that such a man, if he carried their request to the foot of the throne, would be attended to as a man of moral conversation and religious life ought to be attended to.—Whether these were the motives that weighed with them, or not, I do not know: but some motives, however, did induce them to invite him to sit at the head of that Association. He went with them, conversed with them; he told the House of Commons he had been sitting with men of such description; he was told that his petition would have no weight; that there were forged names to it: he was told that other petitions had been treated with neglect, and that the names he should bring were forgeries. He knew the uprightness of his own intentions, and was conscious of the falsity of that aspersion; for it was a foul aspersion indeed; and it belonged to him to take away all possibility of doubt on the imputation of forgery, in order that those who were to judge of this petition, might be informed whether it contained the wishes of such a number of people; for that reason lord George Gordon wished the petitioners might attend him to the House of Commons: But how were they to come? Were they to have banners flying, and be arrayed for war? for the language that has been used to you, conveys every idea short of that.

The word 'array' was not so often thundered in your ears, and 'columns' and 'divisions,' and 'marching under banners,' was not a language used for no purpose. Witnesses do not describe actions which passed in those words, which it appears were not used, without some purpose; and when that same purpose can only be a bad purpose, because it distorts the facts beyond their ordinary force; I say then you must suspect the whole of the evidence.—But I was turned a little on one side from what I was disposed to say to you. How were these people brought together? were they brought together in military array? It has not been suggested. It is true, an officer of the military association from the city of London told you that he met some of these people with sticks, cutlasses, muskets. But were those any of the parties who were in Saint George's-fields? had they any such things? They were ordered to be there at ten o'clock in the morning: the reason that was given why they were to meet so early, was, it was an hour no drunken people would mix with them. That no offence might be given, it was desired that no stick might be in their hands; that they would come in their best clothes; and, in order that they might be known from other persons, that they would have their blue cockades; that they would be in certain divisions, in order that those who were in one part, might know their fellows, and be known by

them; in order that if any strangers committed any outrage and excess, they might be singled out, and delivered over to the civil power, to be punished; and in order that there might be no riot and confusion when the petition was delivered, they were ordered to go round London bridge. In the mean time the petition was delivered, they came through the city: in the course of that journey, when people riotously inclined would hardly have missed an opportunity to riot, you do not find the least excess, not the least violation of good behaviour imputed to them. But if you shall find that before they arrived there, another mob, not belonging to them, were got together; if you shall find that the avenues of the House of Commons were got in possession of by others; if you shall find that excesses were committed; if you shall find, in confirmation of the testimony given you by the witnesses you have already heard, that men of another description, of colonel Miles's description, were there; where then is the great imputation on lord George Gordon?

I do not tell you that this business was not fit for the most sober and solemn enquiry. Most undoubtedly, it was behoveful for government that it should be enquired into: but it would be a libel upon government to suppose that guilt should be affixed to that man to whom it does not belong. Sufficient for every man are his own offences. If other men have been guilty of a violation of the laws of the country, these violations are not to be placed to the reckoning of lord George Gordon. But excesses were committed, and were committed in other parts of the town: and lord George Gordon has, say the gentlemen, by his subsequent acts, taken to himself, has adopted these excesses; and I am sorry to see by what medium of proof that is made out; by no single act of lord George Gordon's, but that he signed what is called a protection. You will be struck with wonder and astonishment when you hear how that happened: lord George Gordon, alarmed and filled with consternation at the riots which had taken place in the town, finding that the blame was imputed to him, and willing to shew all the alacrity which man could shew to get rid of the imputation if he possibly could, desired that he might have access to his sovereign; it will be proved to you that he went to the palace; the Secretary of State will be called, who will state to you lord George Gordon's application; that he came humbly to throw himself at the feet of the throne, professing his own innocence; but sorry from the consequences that were supposed to result from acts of his: he had not access to his sovereign, I do not know that he has any reason to complain, but he was told that he ought, as a test of his loyalty, to go into the city, and see if he could do any thing to stop it.

When he went into the city, how did he go? Did he go at the head of, or mix with,

the mob? Instead of that, he went with one of those who are conservators of the peace, a magistrate of high authority in the city of London, Mr. Sheriff Pugh; in company with that magistrate, he was going to effect, as far as he could, that which he was ordered to effect as a test of his loyalty. A person came to him, and told him, if a note, which he brought to him, was signed by him, it might have a good effect. Suppose he had refused to sign it, I am sure it would have bore hard upon him; it would have been said, a person having a house, inhabited by a Roman Catholic, applied to him to use his supposed influence, that it would be doing him a good turn, and he refused it: he felt it his duty to attempt it; if he had refused it, and if that argument had been urged against him, I should have found some difficulty in turning the edge of it; but when what he did on that occasion is to bring upon his shoulders all the violence that was committed in the city, when by this he is to be supposed to have adopted the acts of the miscreants who committed all the enormities you have heard of, and to acknowledge that he was connected with those men, in my apprehension, that evidence is strained much beyond its fair import. It seems to me, that that is the only medium of proof by which he is attempted to be affected as to what passed in the city, I am sure it will not be laid much stress upon, because I know it ought not; and, in a case of this kind, things are not to be strained beyond their proper import. I know it ought not to be urged against him, that, at several days distance, people with blue cockades committed violences. You, yourselves, surveyed the town; you know that men, of all denominations and descriptions, used blue cockades; you know that there walked about the city bandittis, different, in all respects, from this Association, that robbed and plundered; women have been executed for these riots, but it is not pretended that they were of the Association. It is by inference and intendment that you are to fix this guilt.

Gentlemen, I have opened to you as much as seems necessary to open, of the case of lord George Gordon. I have made those observations which occurred to me on the case laid before you for the crown. Gentlemen, from your own knowledge in the discharge of your duty, you know that in this case the facts are to be made out, the guilt to be ascertained beyond all doubt. It is not at hazard that men are to be convicted of such offences: you are to separate one transaction from the other, and to see how far each separately goes: you are not to bundle them together, and see whether that bundle of nothing makes out something. Juries must see that there is ground upon which they go, carrying conviction to their minds that the imputed guilt is proved. If that is not made out to your satisfaction, however your passions may be warmed by what you saw in those cala-

mitous days, you will, I am sure, divest your minds of these circumstances: you come to this trial with minds totally clear and impartial: you bring into court no knowledge nor suspicions upon the subject, which are to influence your judgment: you come here to attend to the evidence given, attending at the same time to the oaths you have taken, you are to decide upon the evidence, you are to say whether lord George Gordon is guilty or not guilty.

I know that I speak to men of character and station in the world, and of good sense; and who know that their duty is to do justice; and know at the same time that every favourable construction is to be made in behalf of the prisoner. That has always been the language of courts, and will be the language of this court this day.

Under these observations I shall call a few witnesses; and hope you will in the result find that lord George Gordon, whatever blame or fault may be imputed to him, is not guilty of high treason with which he now stands charged.

Mr. Erskine. My lord, I mean to reserve my address to the jury till after the witnesses for the prisoner have been called. There is a precedent for it in the State Trials; and I take it for granted, that lord George Gordon will be indulged in every thing that any man has been indulged in since the statute of king William.

Court. As far as I am concerned in it, I shall be very glad to hear you at any stage, when it is most desirable to yourself.

Mr. Attorney General. I am sure no objection will be made on the part of the counsel for the prosecution.

The Rev. *Erasmus Middleton* sworn.

Examined by *Mr. Erskine.*

You are a clergyman of the Church of England?—I am.

And, I believe, a member of the Protestant Association?—Yes.

Are you pastor of any church?—I am lecturer of St. Bennet's Gracechurch-street, and St. Helen's, Bishopsgate-street.

How long have you been a member of the Protestant Association?—From some time in February, 1779.

Did you attend the meetings held by that Association, previous to the delivery of the Petition to parliament?—I did.

Did you attend them regularly?—Yes; regularly.

Were you a member of the committee?—I was.

State to the Court and the Jury, beginning at that time, all that you saw, and heard at these meetings of the Protestant Association, previous to the delivery of this Petition, when lord George Gordon was present. Give an

account of the constitution of the Association, and its object previous to the time lord George Gordon became president of it?—The Association was formed some time in February, 1778, in consequence of a bill brought into the House of Commons by sir George Savile, to repeal certain penalties against the Papists; a few persons met at Coachmakers' Hall, in Foster-lane, Cheapside, in the same month of February.

Mr. Attorney General. What is it you are reading?—Some notes respecting dates and times.

Mr. Erskine. When did you make them?—I really cannot tell.

Lately?—No; I made them from time to time as they occurred. The Association met from time to time in order to oppose the growth and increase of Popery, by publishing little books, and by making enquiries into the schools, and the increase of those schools; and they agreed, that this Association should be open to all Protestants and Protestant ministers; that they should meet quarterly, in the months of July, October, January, and April. Several public meetings were held, and several resolutions come to of that nature, of publishing books. The lord bishop of Litchfield and Coventry [Hurd] was requested to permit two sermons of his lordship's to be printed for that purpose. His lordship declined that, looking upon it, that if they were taken out of the connection in which they stood, they would not be so serviceable as some others which his lordship recommended to us of archbishop Secker's, Tillotson's, and others. We then printed one of bishop Gibson's letters in his Pastoral Care, and some other little things, and dispersed them abroad; we likewise wrote an Appeal to the Public, which was published on the 5th of November, 1779. On the 12th of Nov. 1779, we wrote a letter soliciting lord George Gordon to become our president; his lordship condescendingly acceded to our petition, and from that time became our honourable president. In this Association we had all along in our view, as our model, the Protestant Association in 1696, when the king, with both Houses of Parliament, the bishops and clergy, signed it, and his majesty, king William 3, proposed it should be lodged in the Records of the Tower. His lordship first met us in the committee about three or four days after he had condescended to become our president.

Court. It cannot be material to go through the history of your meetings, but only what is relative to this petition.—*A.* I can only mention his lordship's conduct, public and private, throughout the business of the Association. His lordship demeaned himself every way in the most loyal affectionate manner: for my own part, I must confess I watched over his lordship's conduct and conversation with a degree of jealousy, knowing that we were ourselves all well known to one another,

the committee well attached to our present sovereign and constitution, and that we were resolved [not] to give nor allow any speech or conversation that should tend in the least to reflect upon any people whatever, and particularly administration. His lordship appeared always the most calm and dispassionate of any one of us, from all I could ever learn; and, as I said before, I looked at his lordship at all times with a kind of jealousy. I never could discover that his lordship had any other design or end in view, but simply that which we had in view, the Protestant interest, and by all legal and constitutional means to petition the House of Commons to repeal, or to explain that act, according to our petition. In all private conversation I have ever had with his lordship, he always expressed the warmest attachment of affection and loyalty to the king, the constitution, and the Protestant interest; we looked upon ourselves happy in having his lordship as our president, not only on account of his rank, but on account of his good moral character and of his abilities.

Did you at any of these numerous meetings of this Protestant Association which you attended, from the time lord George Gordon became president of it, till the 29th of May; did you ever hear lord George Gordon, in his public speeches in that Association, make use of any expressions which shewed any disloyal unconstitutional intentions in him?—Not in the least; the very reverse in my opinion.

Did all his speeches, delivered as president, meet with your approbation; and did it appear to you that his views were the same as those of the whole associated body?—Quite so.

Did you ever hear lord George Gordon make use of any expressions, as if he meant to repeal this Bill by force of arms?—Not in the least, neither directly or indirectly.

Or to do it by terror or intimidation?—No, by no means; nor any expression that led at all to it.

Did you ever hear lord George Gordon make use of any expression, which even by ambiguous construction, could go to setting the Protestant Association to depart from the avowed intention of it?—Not but by a construction that is directly contrary to the meaning of the words.

Then all his language and conduct was conformable to the meaning and purpose of your Association?—Entirely so.

Were all these meetings open?—Quite open.

Have you ever had instances of strangers coming among you for any other purpose?—We had Papists come among us, as we supposed them to be, who made disturbances amongst us.

Setting aside those times, were your meetings always peaceable?—Quite so.

Was any expression, hostile to government, made use of?—No; quite the reverse. Upon a person's speaking disrespectfully of the bi-

shops, he was called to order and was silenced; and at the next committee meeting a resolution was made, that no one should speak disrespectfully in the least of either one side or the other, any further than their names might be mentioned as giving encouragement or discouragement to Popery.

How were your charges at that Association defrayed?—By voluntary subscriptions.

You speak of the bill in parliament when you speak of Popery, don't you?—Yes.

You have gone in your account very distinctly through to the 29th of May. Now state what happened upon the 29th of May, according to the best of your recollection. First, Were you present at that meeting?—I was.

There was a meeting at the Crown and Rolls before that?—Yes, there was.

State what passed there.—We had a committee meeting a few days before Holy Thursday.

What day of the month was it?—I cannot be certain; it was the latter end of April.

Court. Holy Thursday was the 4th of May.—*A.* There was a meeting advertised to be held at the Crown and Rolls; but it was advertised imperfectly, and there were but few people there. A motion was made at the Crown and Rolls, whether the body at large should go up with the petition; that was over-ruled. Lord George Gordon was not there then; but at the meeting of the committee previous to that meeting at the Crown and Rolls, his lordship had promised to be in the chair at the Crown and Rolls, that meeting being intended to be the last; but, as I said before, the meeting being thin on account of the advertisement being imperfect, it was agreed to have a meeting on the 29th of May at Coachmaker's-hall; but the motion that was made at the Crown and Rolls for the body at large to go up with the petition, was over-ruled; it was not made a motion of, but got over by the gentleman in the chair, and the gentlemen round the chair; it was spoken to; the person who made the motion seemed satisfied with dropping it.

It was opposed and withdrawn?—No, it was not opposed, but it was over-ruled, and there was nothing more of it.

Then this motion was not made regularly to the chair, so as to come before the body?—No.

Court. You know whether the members did or did not oppose it?—*A.* There was a great deal of confusion, some were for it, and some against it, so it ended that way.

And so there being some confusion, the meeting was adjourned?—With some confusion, whether there should be another or not.

What followed upon it?—A committee-meeting followed immediately upon it, and his lordship hearing of the disputes and confusion that were between the gentlemen of the committee and the Association. The Association had held up their hands contrary to

what they meant relative to another meeting; they misunderstood the motion from the chair.

There was a misunderstanding?—Yes.

How was that cleared up?—His lordship met us at the next committee meeting.

Where was that committee held?—In Beaufort-buildings; his lordship spoke to every one of the committee severally, to know every one's opinion, whether there should be another public meeting or not, and then having spoken to every one severally, he desired us to hold up our hands, which we did, when only the secretary held up his against it; and the gentleman who was in the chair did not hold up his hand either one way or the other. In the mean time, his lordship received a petition from some of the most respectable of the Association, requesting another meeting, in consequence of their having misunderstood the motion from the chair in the last public meeting; it was then agreed there should be another meeting.

Was there any advertisement that there would be another meeting?—There was; it was printed in the several news-papers.

Do you remember whether that was it? (Shewing the witness an advertisement.)—(Looking at it) It was to that purport. "A meeting will be held on the 29th instant, at Coachmaker's-hall, where I shall have the honour of attending you in the chair."

This advertisement being published, and the meeting of course, I suppose, being held in pursuance of this advertisement, be so good as state what happened at that public meeting; were you present at it?—I was; his lordship came into a side room, much about the time when it was usual to take the chair; his lordship took out papers relative to the business of the meeting, and read over to us the heads of what he proposed to lay before the Association. After a few minutes, his lordship took the chair, the people being very desirous to see him, and have him in the chair, informing him that it was time he opened the business.

Tell the court and jury first, what passed at the Crown and Rolls, as to the deliberation of the committee relative to postponing the presenting the petition till another year?—The committee were almost unanimous for postponing the presenting of the petition till another session of parliament.

What was the cause of that opinion?—I am not so clear in that, being the only one that was against postponing it; after two or three committee meetings, they were so convinced by his lordship's arguments, of the expediency of presenting it in the present session, that they unanimously agreed to it in the course of two or three committee meetings; but in the course of their opposition, they went so far, as to send for the petition from his lordship's house, and it was lodged in the hands of one of the gentlemen of the committee.

How came the committee unanimously to change their opinion upon that subject?

Court. Was it by the prisoner's arguments that they were prevailed upon to bring it on, or to postpone it?—*A.* The arguments his lordship and I used with them. At the committee meetings following, when his lordship was not present, I convinced them of the propriety of presenting it that session.

Lord George Gordon having, agreeable to the wishes of all the committee, except the secretary, advertised this second meeting, in consequence of a petition delivered to him from many of the respectable members of the body at large, advertised that meeting on the 29th of May, which is mentioned now; how did lord George Gordon conduct himself in the course of the meeting on the 29th of May?—His lordship read over several papers, after shortly addressing the people, and expressing his happiness in seeing them, and the like.

Now you are got to the 29th again?—Yes.

What papers?—I don't recollect particularly, but respecting the business of the Association, letters and such things; his lordship then begged to resume, what he had heard had been made a motion of in a former meeting at which he was not present, alluding to the last meeting at the Crown and Rolls, and to the motion that was there made, whether the body at large should go up with the petition: lord Gordon said, "he had been informed that the Association were against going up with their petition, and he begged to know from themselves if it were so?" upon that immediately from all parts of the hall it was cried out, O no my lord, no my lord; he then made the motion, and it appeared in the Association to be carried unanimously; his lordship then read over the resolves, and proposed the time and place to adjourn that meeting to, that they should adjourn to St. George's-fields, as no place would contain the number that should assemble, and he proposed, "that they should be arranged in different divisions, that his lordship might go from one to the other and learn the sense and determination of the whole, respecting the mode of taking up the petition," informing us, "that it had been hinted, that it was a very easy matter for a person to sit down and write 4 or 500 names to a petition, and therefore it would be necessary that they should appear to their subscriptions, and convince the world that they were not fictitious." His lordship "begged they would dress themselves and appear decently and very orderly, and to distinguish them from other people, so that no riots might ensue, he proposed they should have a cockade in their hats, that he thought upon such an occasion at least 20,000 might attend, that they should meet at ten in the morning." Some one objected, that by meeting so early they might get to drinking; in answer to which his lordship observed, "the Protestant Association were not drunken peo-

ple, and he apprehended no danger on that account." Some one observed, that he thought such a great number of people being assembled might cause the military to be drawn out, his lordship answered, "he did not apprehend the military would be drawn out, that they would be all peaceable and orderly he did not doubt, he desired them not so much as to take sticks in their hands, that he was so far from apprehending any, that he begged he might be the first that should be in danger, and begged if there was any riotous person, that the rest should give him up, and that if he should even strike any of them not to return it, but to take such person out, that he might be given up to a constable and taken away," his lordship said, "if he himself was at all riotous he would wish to be given up, for he thought it was a proper spirit for Protestants," and to the best of my recollection he used that expression, "if they smite you on the one cheek, turn the other also."

Were you present during the whole time of these meetings?—I was.

And have given the court the general tenor of his lordship's conduct and his words?—I have.

Whether you remember that lord George Gordon during the course of that night, made use of any inflammatory expressions, or were all his expressions such as you have mentioned now, recommending peace, decency and order?—Quite so; much more so than I have expressed; his lordship exhorted them repeatedly.

That was the general tenor of his behaviour, according with the disposition of the assembly that night, quite loyal and constitutional?—Altogether so, as far as I am a judge of what is constitutional.

Cross-examined by Mr. *Attorney General*.

You said it was determined to adjourn to St. George's-fields, to divide there into four divisions, and then take the sense of the whole how the mode of presenting the petition was to be?—Yes.

How many might there be at your meeting who were exhorted to behave peaceably?—I cannot say.

Two hundred?—I apprehend many more.

Three hundred?—Many more.

Four or five hundred?—I don't know how many, the rooms will hold a thousand I suppose or more, there are large galleries, and we were told by those that were without, that many more were without than within.

Did it occur to you how his lordship was to consult 40,000 men upon the subject of the mode of presenting the petition; did not you expect 40,000?—I did not expect there would have been 5,000.

Because I have heard the reason of quitting the hall was, because it would not hold 40,000 men—20,000 lord George expected?—Yes.

Was it explained how they were to be con-

sulted in St. George's-fields?—I have explained it already.

Was it by holding up hands, or in what way?—They were divided into separate divisions for that purpose.

When they were consulted, was it by holding up hands, or how?—I was not in the fields.

Then it was not determined how the petition was to be presented?—No; other gentlemen who were in the fields will speak to that point.

Was it understood as positively determined at Coachmaker's-hall, that it should be presented to the House on the Friday, or were they only to meet to consult about the mode of presenting it?—I understood it was to be presented that day, but that the mode of taking it up was to be determined in the fields.

What do you mean by the mode?—Whether his lordship was to take it up by himself, or whether some gentlemen there were to take it up, or the body at large; for these different ways had all been spoken upon.

Why were not you there?—I had parochial duty to attend.

Was that, upon your oath, the reason of your not attending in the fields?—It was.

Not because you disapproved of taking it up?—I can't say that; I was one with the rest of the committee who thought it was inexpedient.

Did all the committee agree with you?—I cannot say that.

You said the rest of the committee.—Several of them.

Most of them?—I believe so.

Unanimously?—I cannot say.

Were you present at a committee on the 31st of May, when a resolution was come to, "that the mode of presenting it, accompanied by the general body, was contrary to the sense of the committee"?

Mr. *Kenyon*. If that was reduced into writing, I object to the witness's giving parol testimony of it.

Attorney General. Then I ask you, whether some of the committee did not disapprove of presenting it by the general body?

Mr. *Kenyon*. Then I must object to that question, as it respects a written paper.

Court. You may ask him whether they were unanimous.

Attorney General. Then you disapproved of its being accompanied by the general body, did you not?—A. What I did is written down, my dissent.

Court. Was my lord George Gordon's motion upon the 29th of May in writing; because you have been giving in evidence something supposed to be in writing. Was the motion put into writing or not?—A. I really cannot say.

Attorney General. Was the adjournment of the Association to St. George's-fields put into writing? I fancy all their actions are in writing.—A. Several of them are.

Court. Most undoubtedly you cannot ask to the contents of any thing that is in writing, without producing the writing itself.

Attorney General. I ask you, whether you did not, in your opinion and judgment, disapprove of going up with this petition, accompanied by the general body?—A. Yes.

Then, when it was determined before the 2nd of June to go up with the general body, you disapproved of it?—I did not know before the 2nd of June that it was to be; it was spoken of in the side-room a few minutes before his lordship came to take the chair, that his lordship intended to resume that subject that had been spoken to in the Old Crown and Rolls at the last public meeting, and to know from the Association at large, whether they thought it proper to go up with it at large; and then it was that I and some others thought it would be inexpedient.

Whether that was not the reason with you for not attending it, because you disapproved of it?—No; I had parochial duty.

Did any other of the committee attend that you know of?—I don't know.

Court. What was the parochial duty you had to attend?—A. Reading prayers; it was on a Friday.

What was the hour of prayers?—At eleven o'clock. I have generally children to baptize, and frequently pensioners to bury, that are buried always immediately after church.

After church in the morning service?—Yes.

Then you would have been time enough?—Not to have gone to the fields.

Attorney General. But you might have taken the opportunity to have gone upon so important an occasion?—A. I make a conscience of doing my duty.

Did it not occur to you that a petition presented in June could not, in the ordinary course of proceeding, produce a bill that session of parliament?—I knew if it had been as hastily gone through as the Bill presented by sir George Savile was, that it might have been easily done in that session.

How long was that Bill going through?—I can only speak as to report. Upon the information I have had, I believe we shall find it received the royal assent in as short a time after it was presented, as our Bill would, if it had been received upon the 29th of May.

You did not suppose that the session would break up the day after the king's birth-day?—I did not suppose so.

Which of the members was it who objected to the assembling so great a number in St. George's-fields with cockades, and that he thought it might endanger the calling out of the military?—I do not know.

David Lord Viscount Stormont sworn.

Examined by Mr. Kenyon.

During the course of the riot which happened in the month of June last, did your lordship see lord George Gordon at Buckingham-house?—I did.

Does your lordship recollect what day he was there?—On Wednesday the 7th of June, between ten and eleven in the morning, as to the hour, to the best of my recollection, the day I am certain of.

What was the business that brought his lordship there?—I will state exactly the whole to the best of my recollection; I was attending his majesty at the Queen's-house, with several of his majesty's other confidential servants, on Wednesday the 7th of June in the morning, at the hour I mentioned; a page came and scratched at the door, I went out by order, when he said, that the prisoner at the bar was at the gate of the Queen's-house, desiring, I think, to see his majesty; I went out with another noble lord, and gave directions, that lord George Gordon should be brought into a room in the colonade. I then went to him to ask what his lordship desired or wanted; his answer to me was, that "he desired to see the king, because he could be of essential" or "material service," or "do great service in suppressing the riots." I went with this message, and delivered it exactly to the king, whom I was then attending, as I have observed, with several of his confidential servants, and the answer I delivered to his lordship was this: "It is impossible for the king to see lord George Gordon, until he has given sufficient proofs of his allegiance and loyalty, by employing those means which he says he has in his power, to quell the disturbances, and restore peace to this capital." That was all I had to say to his lordship; his lordship to that answered, that "if he might presume to reply, he would say, that his best endeavours should be used" or "employed," or to that purpose, that is, to the best of my remembrance, the whole that passed.

Lord George Gordon wishes to know, whether your lordship is accurate as to the words?—I am, I think, most particularly accurate to every word that I used, and very accurate as to the strict and exact sense of the words used by lord George Gordon; I cannot speak with the same accuracy, as to the words used by another, as I can to the words used by myself.

His lordship said that he would use his best endeavours?—The answer I gave him, was to be considered as final, to that request made by lord George Gordon; then he said, if he might presume to reply, his reply was, that his best endeavours should be used.

Mr. Thomas Evans sworn.

Examined by Mr. Kenyon.

I believe you were in St. George's-fields on the 2d of June?—I was.

There was a very large assembly of people there?—Yes, there was.

Have you been a member of the Protestant Association?—I do not understand what you mean by a member, I was a petitioner.

There were a great number of people there

of the same description, who were petitioners?—Yes.

When they came there, had they any weapons or sticks?—I did not go along with them, nor did I see any thing of the kind.

When you were there, did you give any information to lord George Gordon as to any apprehensions?—I did. On the 2d of June 1780, between ten and eleven o'clock, I was coming in a coach through Bridge-street Westminster, with three friends; I was going to St. George's-fields, the coach was stopped by a Mr. Smith, who keeps the Guildhall, Westminster, whom I knew very well; Mr. Smith asked me if we were going to the fields, I told him we were; he said he had something of great consequence to communicate to lord George Gordon, for the committee of the Protestant Association; being asked what it was, he told me he had been credibly informed, that there were a number of journeymen weavers from Spital-fields—

Court. That is not evidence.—*A.* Having received this information from Mr. Smith, I told him I did not know lord George Gordon, but I would endeavour to see him in the fields; upon entering the fields, I saw a division formed, which, upon enquiry, was the Scotch division, and in the centre was lord George Gordon; I, and one of my friends got out of the coach, and got to the ring with great difficulty, after making an apology to his lordship for addressing him, I told him I had just been informed by Mr. Smith at Guildhall, that there would be a riot in Westminster, provided more than thirty or forty attempted to go to the House of Commons with the petition, and I asked his lordship if he meant that the whole body was to attend him? he made a reply "by no means, by no means." I asked his lordship what was his plan, he said "he intended to go to the House alone, and some time after he had been there, the petition was to follow him to the lobby of the House of Commons, and there to wait till he came out to receive it." I told his lordship I was exceedingly glad of it, for by that means the enemy would be prevented from hurting the cause; I asked him, whether he would give me leave to tell the people so; he said "with all his heart." I immediately went to that side of the ring next me and told the people, that they were to remain in the fields, my lord George Gordon intending to go alone. I remember my lord called a person to him who seemed to be in a Scotch dress, I thought to give that information to him, I went to my friends and told them what I had done, then I saw the spot I had just left was all in confusion, I drove my coach up to the obelisk, being informed by a gentleman they were forming divisions up at the other end of the field. When I came there, I saw the people to my great surprize, instead of forming divisions, were in a marching line six in a row, with their faces towards the Borough, I got out of my coach, I went to them and

asked them what they were going to do, they said, "they were going to march through the city," I told them, they must not stir out of the fields, for I had just left lord George Gordon, who had told me he intended to go alone, and informed them what Mr. Smith had told me, that I was sure there would be a riot if more than thirty or forty people went to the House; they made answer, "I need not be afraid of that, for they were determined to make none." As soon as they had told me that, a gentleman came up and said, as you, Sir, are so zealous in the cause, you had better go over Blackfriars-bridge, and meet the Association for London, and bring them back again;" I said that was a thing I could not do, I was very fatigued, and I went to the coach and drove directly home.

Did you see them at Charing-cross?—I saw them no where else.

Cross-examined by Mr. *Attorney General*.

Lord George Gordon said, he was to go to the House alone, and the petition was to be brought to him to the lobby?—Yes.

By whom it was to be brought you did not understand?—No.

Did you see the petition?—Yes; before I saw lord George Gordon, I saw the petition upon a man's head in one of the rings, I believe the ring of the Scotch division.

Then you do not know whether the London division carried it?—No.

Lord George Gordon did not know you?—He did not, and I had never seen his lordship before.

Mr. *John Spinnage* sworn.

Examined by Mr. *Erskine*.

What are you?—I am in no profession at all.

Were you at Palace-yard on the 2d of June?—I went in a coach with a friend or two about eleven o'clock. Mr. Smith, the keeper of the Guildhall, Westminster, when we turned into Bridge-street, came up to the coach, he asked, if we were going to St. George's-fields, I said we were; he asked if we knew lord George Gordon, if we did, he should be glad we would speak to his lordship and tell him—

Court. Come to what you said to lord George Gordon.—A. I went and said, "I hope your lordship does not mean to take any part of this body of people over Westminster-bridge," his lordship said, "no, by no means in the world, I mean to go to the House alone." I don't recollect that I had any farther conversation with his lordship.

Who were in the coach with you?—Mr. Evans was one.

In what condition were the people you saw in St. George's-fields?—I saw them in a very quiet peaceable state.

Were there any people in Parliament-street when you came away?—I don't know, we came away very soon.

Had the people in the fields any weapons or any sticks?—I saw none.

Were they well dressed, decent in their apparel?—All that I saw in general, were.

Far from being the rabble?—Quite so.

Cross-examined by Mr. *Attorney General*.

They were in their best clothes?—They were all very decent.

You saw the Scotch body?—They might be, for what I know.

William Smith sworn.

Examined by Mr. *Kenyon*.

You are the keeper of Guildhall, Westminster?—Yes, I am.

Do you remember Friday, the 2nd of June?—Yes.

About what time did the Protestant Association come into the neighbourhood of Guildhall, Westminster?—At pretty near one o'clock, I believe.

Before they came there, did you at any hour, and what hour in the day see any other collection of people there?—No, only one Walter Russell, who said, he was the keeper of the Salutation tavern in Newgate-street, he was one put upon the sheriff's jury, he came down at a quarter past ten, and said, I am afraid here will be a very great disturbance.

Did you yourself see any of the circumstances he observed to you?—No, I knew nothing of it.

Mrs. *Elizabeth Whittingham* sworn.

Examined by Mr. *Kenyon*.

You were in St. George's-fields on the 2nd of June?—I was.

You were I believe in a coach?—I was.

Do you recollect lord George Gordon's coming to the coach?—Very well, he came to the coach ready to faint, and asked leave to come in, which we immediately gave him, he was very near fainting away, he did get into the coach.

Did you continue the coach there, or drive away?—We continued a few minutes. Some gentlemen surrounded the coach and we could not get off, they desired they might attend lord George Gordon, my lord begged "they would not, for that he would have no help, no assistance at all, he was very well;" they said, "pray let us attend you to the House," he said, "no, by no means, I shall be greatly obliged to you, gentlemen, if you will all go back," for he did not choose to be attended by them.

What did he do, did he go without the Petition?—The coach set off and set his lordship down at the House of Commons.

Without this multitude of people?—Yes, without any body with him.

Cross-examined by Mr. *Attorney General*.

Lord George Gordon was fatigued and ready to faint, and they begged to attend

him?—Yes, when he was going to the House, he desired to be excused, he wanted no attendance.

How many might there be of them, three or four?—No, 30 or 40.

Alexander Johnston sworn.

Examined by Mr. *Erskine*.

Were you in Palace-yard on the 2nd of June?—Yes.

How early in the morning were you there?—I was not there till between twelve and one o'clock.

Were there a great many people there at that time?—I came there with the procession of the Protestant Association.

Did you find any persons there before you?—A great many thousands before us I suppose, I was in the last of the London Association.

Did you find any others besides the Association there before you?—Not at that time.

Did you go along quietly and peaceably?—Yes.

Were there any disturbances of any kind?—Not the least, there was nothing but good harmony and peace, the best of peace. I went from my own house to St. George's-fields about nine in the morning.

Did you see lord George Gordon there?—I did.

Did you hear him speak there?—No, I was not near enough to hear him speak.

Were there any disturbances in St. George's-fields then?—None.

Did you see the disturbances in Palace-yard afterwards in that afternoon?—I did.

Were the disturbances committed by those people that you had seen in St. George's-fields?—No, I can tell the whole; I went to St. George's-fields at nine o'clock in the morning. I came from St. George's-fields to Palace-yard, I believe between twelve and one o'clock, I staid there not more than ten minutes, then I went with 18 or 20 more of my acquaintance into the Strand, after dinner we smoked a pipe till between six and seven at night, then word came to the house we were at, that there was a disturbance in Palace-yard, that they were stopping every carriage, that the carriages could neither pass nor re-pass; the company with me said, we had better go down to Palace-yard, and try to quell the mob if possible, I told them they were no friends to our cause, and we had better stay where we were, but they insisted we should go, and try what we could do; through their persuasions I went, and when I came into Parliament-street, I saw a coach, there were about 20 boys and five or six men stopping the carriage, I said to my friends who were with me, "you see how it is, I told you how it would be." There were about 20 boys, not one of them above 16 or 18 years of age, I suppose, and four or five men stopping the carriages; I then went over to the coach, I took hold of a man by the breast that was

next the coach-door, I asked him who gave him authority to stop that carriage? he said, "he had got authority;" I asked him from whom? he said, "it was no matter from whom, he had got authority;" then I told him I had got authority to take him: I took him by the breast, and gave him in charge to one of the gentlemen that were along with me, and as soon as I did that, the rest ran all away, and left the carriage to itself. I intended to give the man into custody, but the gentlemen who were with me, persuaded me to let him go, which I did, and the carriage went on.

Whether the set of people you saw making that riot, were quite a different set of people from the Protestant Association?—They were a set of boys, quite a set of pick-pockets.

Did they appear like those of the Protestant Association you had seen in the morning?—No; not in the least appearance like them; no such thing.

Cross-examined by Mr. *Attorney General*.

How many boys were there?—I suppose there might be 18 or 20 lads, about 16 or 18 years of age.

Did you not know that the body of your Association was at the House of Commons?—I did not know but that every one was dispersed.

So you, from mere kindness, came out of the Strand, to quell a riot in Parliament-street, without an idea that the Protestant Association was there?—I did, upon honour.

Court. Had the Protestant Association left the House of Commons between seven and eight o'clock?—A. I don't know whether they had or not; I had not seen the House of Commons, I had not seen the Protestant Association, from half an hour after twelve o'clock. I then came down to Palace-yard, they were stopping every carriage that was there, I went over to a carriage which an old gentleman was in, he said, he was as serious in the cause as any one of us, and begged they would let him pass; I went and took hold of the man at the coach door, and asked him who gave him authority to stop the carriage, he said "he had authority to stop every carriage;" I held him by the breast, and several about him got hold of me, and held me by my hair, and I was a week after that before I could straighten my neck.

" *Alexander Fraser* sworn.

Examined by Mr. *Kenyon*.

Were you in St. George's-fields on the 2d of June?—I was.

You were one of the Protestant Association?—I signed the petition.

Were you on the Westminster side before the petitioners came there from London?—Yes. I went that way to the fields.

Were there any appearances of people being collected on the Westminster side of the

bridge, before you went to St. George's-fields? —A very many.

Of what description? Were these people part of the petitioners, or any others?—I did not believe they were. I saw several bodies of people, sometimes a dozen or so, collected together on the bridge: it was a very hot day, I went close to them, and asked them, "Do you belong to the Association?" as they had all blue cockades.

Did they appear to you to be of the body of petitioners?—No, they did not, and many of them were in liquor.

This was before the petitioners arrived there?—This was about eleven o'clock.

What time of day was it before the petitioners came to Palace-yard?—At the end of Downing-street I spoke with the Protestant Association.

What time was that?—Between three and four o'clock. These people were going along the bridge promiscuously in the greatest confusion, I suppose 100 of them were passing continually both from the Borough and to the Borough.

When you asked them if they were of the Association, what answer did they make?—One with a great stick, who seemed to be in liquor, held up his stick and said, "No, damn it, this is all our Association."

Cross-examined by Mr. Attorney General.

These people had all blue cockades in their hats?—Yes.

And some of them were going into the fields, where the Association assembled?—Yes. But most of them were coming over the bridge towards Westminster.

But what became of them you don't know?—No. I returned about one from the fields, and as soon as I got to the end of Parliament-street, (before I got home) the riot was begun. Several carriages were stopped, and some of them were pulling the people out of their carriages, and were writing upon the carriages, No Popery.

When was that?—At one o'clock; at the end of Downing-street, in Parliament-street; the confusion began principally about the end of that street.

Court. Had they blue cockades?—A. They had.

Sir Philip Jennings Clerke sworn.

Examined by Mr. Kenyon.

Were you in St. George's-fields on Friday the 2d of June?—Yes; that morning I had some business at the Temple, I ordered my horses down to Blackfriars-bridge, and rode across St. George's-fields to Westminster.

About what time was it you rode across the fields?—I suppose about one o'clock, or between one and two; I cannot be particular to a quarter of an hour.

Were the petitioners assembled in the fields at that time?—There was a vast number of people upon the road, and many coming back

from the fields, for the great body of them had marched away to the city; but I met vast numbers returning to the fields, and many were going from the fields, and there were great numbers in the fields.

Did you take notice of the persons you saw in the fields?—I took very particular notice of them.

What kind of class of people did they appear to be?—The better sort of tradesmen; they were all well-dressed decent sort of people; I stopped in the fields and conversed with a great number of them; I asked them what was the occasion of their assembling? there was a great number of different parties, for I rode close by the side of the foot-path. All that I conversed with told me, that their desire was that there should be a stop put to public preaching and public teaching; that was the whole of what they said to me; they were all exceeding quiet and orderly, and very civil, and they had no particular reason to be so to me, because I never put a blue cockade into my hat.

You afterwards went to attend your duty in parliament?—No; I rode across Westminster-bridge; I went home, took off my boots, dressed myself, and then came down to the House of Commons. I found a vast number of people in going from Westminster up to the other part of the town, and a great number of people when I came down to the lobby.

Did you take notice of these people you found in the town and in the lobby?—I did.

Were they of the same description of people you saw in St. George's-fields?—My own opinion was, that the people who were first in the lobby were not the same who were there very late in the evening; those there late in the evening were a lower kind of people, more a mob of blackguards.

As you went to the House of Commons did you observe any appearance about Charing-cross?—I met thousands of people returning from Westminster, between Westminster-hall and Charing-cross, both sides of the way as full as they could crowd.

Were those people of the same description with what you saw in St. George's-fields?—They seemed the same kind of people, who were returning from thence, that I had seen in St. George's-fields.

And when you came down to Westminster you saw a crowd of people of another description?—Yes. Those I saw in the lobby in the afternoon, neither from their appearance nor behaviour seemed the same sort of people I had seen in St. George's-fields.

Did you hear the conversation which lord George Gordon held to the people in the lobby?—I heard some of it. I accidentally went by the gallery which looks over the lobby two or three times, and did hear part of the conversation, but the stench from the bottom was so bad, nobody would have chosen to have staid long.

What was the conversation you heard?—

The chief I recollect was, I did hear lord George say, "the member for Bristol is now speaking, he is no friend to your petition; but take notice I give you no advice, unless it is that you should be temperate and firm."

Court. What time of night was this?—*A.* I think not very late in the evening; but I heard him repeat those words, 'temperate and firm,' more than once in other parts of the evening.

Cross-examined by *Mr. Attorney General.*

If you recollect, this speech of Mr. Burke's was pretty early?—It was.

Because, if you recollect, all speaking in the House was prevented for many hours.—Yes, it was after that.

You know the House could not divide, the lobby being full?—Yes, it was so.

You heard lord George say to the people, be temperate and firm, and that Mr. Burke was no friend, but he gave them no advice?—That was the substance.

You heard him tell them to be temperate and firm?—Yes, in the latter part of the evening.

You think this body was gradually changing. At what time in the evening did you observe any change?—I did not see them only upon looking over the gallery.

Had they cockades as well as the others?—I believe they had.

Did you hear what the people said to my lord George?—No; I heard very little of it. I told you before there was such an intolerable stench in looking over the gallery, that I did not think it worth my while to stay there any longer.

Did you not apply to lord George Gordon to get him to speak to the people and to send them away?—I did not; I was for dismissing ourselves. I was of opinion they might have done it with great security.

What time was that?—At the beginning, when the House would not go on, when they stopped the business.

Did you attend the House of Commons again on the Tuesday?—I did.

Was there not a mob there on the Tuesday evening?—Yes, I think so.

Do not you recollect that there was?—Do you mean in the lobby?

No. Do not you recollect there were soldiers there on the Tuesday to keep them out?—I think the soldiers were not there at first, if I recollect right.

Did you see lord George Gordon on the Tuesday?—I think he was at the House.

Did you see him in the evening, when the House broke up?—I think it was the Tuesday night he went home in a coach with sir James Lowther and me.

You went home in a different manner on Tuesday from what you did on the Friday; you were not drawn by such animals on Friday as drew you on Tuesday?

Court. What were the animals?

How were you and my lord George received and treated by the mob on Tuesday night?—Would you have me tell you all that passed that evening, after we came out of the House?

Mr. Kenyon. I have no objection.—*A.* A great number of members came out together, we were walking away home, I happened when we got through the guards, to be very near lord George Gordon; when we got through the guards, the people began to crowd upon us, I said, "come, lord George, you must be my protector." The reason of my saying that to him was, that on the Friday night, I believe, I was one who was in a very small division for entering into the petition, and then adjourning, for I was then of opinion, that a petition, signed by forty thousand people, did merit some attention from the legislature, and have not changed that opinion at all. I had not the honour of any personal acquaintance with lord George Gordon before that time: coming out with him, I said, when I found we had got into the mob, "you must protect me," when we had gone a little way, he rather wanted protection himself; for they crowded prodigiously upon him; when we had got opposite to a tavern, I believe it was the Horn, there was a chariot standing there, lord George Gordon looked up at the window, and saw Mr. Wiggons the owner of that chariot; he said, "Wiggons, I am in sad distress, will you lend me your chariot?" Mr. Wiggons said, "yes, with all my heart;" lord George Gordon stepped in; being exceedingly glad to get out of the crowd, I was very glad to get in too, I would have escaped, but could not, I told him I was going to dine with a friend at Whitehall, and desired to be set down there; when we had got into the carriage, they closed upon us in an instant, and began to take the horses off, and it was impossible to get out of the carriage; I said to lord George Gordon, "can you contrive any way in the world to let me out, for I have a friend waiting for me to dinner at Whitehall?" the people got all over the chariot's braces, and hung upon them, and this continued all the way, and I was dragged quite to the further end of the city, to alderman Bull's house; the carriage went as fast as if we had a pair of very good horses drawing us, and it ran over twenty people I suppose.

Did the men draw the carriage?—Yes; they made one little stop just at Whitehall, I thought I should have got out there, but could not; then they made another stop at the Mansion-house, they said, "they must give three cheers to my Lord-Mayor," then they came and said, "Lord George, let us hear the resolution of the House?" I began to be rather alarmed then, because I thought they imagined the House had resolved in their favour, but there was so much noise and bustle, that fortunately for us, I believe they did not hear what the resolution

was; then they drew us on to alderman Bull's door, there was such a crowd there, that it was some time before we could get into the house, when we came into Mr. Bull's house, the mob did not disperse at all, lord George Gordon was advised to send word, that he was gone away from thence by a back door, in hopes that the mob would disperse; we waited there an hour and a half, but to no purpose; then some of Mr. Bull's family told his lordship, that it was in vain to think that they would quit the house while he continued in it, and therefore they advised him to go where he meant to go, accordingly he went down and got into the chariot; when the coast was quite clear, which I believe was not till half an hour after, I got into a hackney coach and drove away,

How came they to draw you to alderman Bull's house?—I cannot say, I was quite an accidental passenger.

How came it into their heads to take lord George Gordon and you to alderman Bull's?—I can't tell: because lord George, when I asked him to take me to Whitehall, told me "he would," and he would have done it I am convinced, if he could.

Mr. *Kenyon*. When they took the horses from the carriage, what did lord George Gordon say to them?—A. He said, "for God's sake go peaceably home, and go about y business;" he said, whenever he could speak, "whilst you assemble in this tumultuous way, your petition will never be complied with, the House will never consent to do it." It was impossible for any man to take more pains than lord George Gordon did, to prevail upon the people to disperse, and he said so much, that I assure you, when they put him to read the resolution of the House of Commons, it was so different from the hopes he had held out to them, that I expected they would have torn us to pieces.

One of the Jury. Did these appear to be the same sort of people you had seen in St. George's-fields on the Friday?—A. They were so thick and such numbers of them, that I could hardly give any description of them, and to tell you the truth, I had no great pleasure in looking out at the windows, I kept pretty snug in the corner of the chariot. I beg to say one word more, I should be very glad to say any thing in favour of a man whom I think an injured innocent man. There has been some doubt, I understand, in regard to where lord George Gordon was on the Friday night when we went out of the House, I have only to say, that sir James Lowther carried me home, we had gone out of the House, but we returned upon seeing the soldiers come, because one of the soldiers had been insolent to lord John Cavendish, his lordship came into the House to make some complaint, and we returned into the House with him. While I was sitting upon the bench I usually sit on, lord George Gordon called out to sir James Lowther and asked

him, if he could carry him home with him, sir James complied with his lordship's request, he carried me to the top of St. James's street, he then went home, and his carriage took lord George Gordon to his own house.

Mr. *Kenyon*. Do you recollect lord George Gordon's saying any thing to the people from Mr. Bull's window?—A. I do not recollect; when we went into the room, it was a sort of a bow window, his lordship looked out at the window and went away, then some of alderman Bull's people said he was gone out at the back door, in order to get the people to disperse.

Mr. *John Turner* sworn.

Examined by Mr. *Kenyon*.

You were in St. George's-fields on the 2d of June?—I was.

Do you recollect any conversation that passed respecting lord George Gordon's going to the House of Commons?—I heard lord George Gordon speak to the people in St. George-fields, desiring they would keep peace and good order; he said, "if any thing had weight with their petition, it would be their quiet and peaceable behaviour, and that nothing else would have weight with it." His lordship said, "he was informed since he came into the fields, that a number of persons had come abroad that day, on purpose to raise a riot and a tumult," he said, "do not be led away by any such persons."

Mr. *John Humphreys* sworn.

Examined by Mr. *Kenyon*.

Were you in St. George's-fields, on the 2d of June?—I was.

Did you hear lord George Gordon speak to the people that were assembled there, respecting what they were to do?—I remember a gentleman's coming from lord George Gordon, and speaking to the people desiring them to disperse, and not to go up to the House upon any consideration, on account that there was an act of parliament which specified, that only so many people should go up with a petition, and desired they would disperse.

One of the Jury. Did he desire them not to go up to the House, or to disperse?—He said both; he desired them not to go up to the House, but to disperse.

Court. What time of the day was this?—About eleven o'clock.

Were you within the ring where lord George Gordon was?—I was sitting down on the inside of the ring; those inside sat down, the next kneeled down, and the next stood up.

Do you know the gentleman's name who came with that message from lord George Gordon?—No; it was a lusty gentleman, rather bigger than myself.

Cross-examined by Mr. *Solicitor General*.

After lord George Gordon had sent this message to you, where did he go?—After that

was said, a gentleman came and told them to go to their divisions immediately, after that the ring was broke, and I did not get sight of his lordship afterwards.

Mr. Sampson Hotchkisson sworn.

Examined by Mr. Kenyon.

Were you in St. George's-fields on the 2d of June?—Yes, I was.

Did you hear any conversation of lord George Gordon's relative to going up with the petition?—I heard a conversation; lord George Gordon and many others were present in St. George's-fields; the substance of it was, that there might be many friends and many foes to the matter in hand, and they might give cause for disorder; and as it was business of importance, they so far saw it necessary to receive insults, that if they were struck over one cheek, they would rather offer the other than resent it.

Who said that?—I cannot place it upon any particular person; but it was a common conversation both in the middle and round the ring; his lordship might speak it or others might speak it.

Did lord George Gordon say any thing about who should go up with the petition?—I have a frail memory; but I think, owing to some advice coming into the ring, by some mechanical persons, paper-makers I believe, his lordship advised a certain number to go up with it; he said, "he would wish to avoid all offence, and it might be attended with contention, trouble and disorder; therefore he wished for a small number to go." Many that were inside the ring where I was, said, "they were men capable of conducting themselves with peace and order, and they chose to go in person."

Did lord George Gordon mention the number?—I cannot positively speak of the number; I think he might mention the number of twelve or less; but I will not speak to that point.

This number of people however did go over London-bridge?—Yes.

How did they behave in the way?—Very peaceably; when many people in the street would huzza them and caress them, they made a signal to drop the hand, signifying that they did not approve of it.

Mr. John Robinson sworn.

Examined by Mr. Erskine.

Were you in St. George's-fields on the 2d of June?—I was,

At what time did you go there?—About the hour of twelve.

Did you see my lord George Gordon there?—I did not see his lordship that day at all.

How long did you stay in the fields?—Till they all marched away together over the bridge.

Were you one of those that marched?—Yes; I went in procession to Westminster.

Was there any riot or tumult?—Not in go-

ing to Westminster, the procession went very quietly to Westminster; I went with two or three friends to get some refreshment, I staid two or three hours, I had not staid long before I found some people growing very riotous.

Where was this?—In Palace-yard.

Were they of the Association?—I don't know that there was one of the Association among them: there was not one that I knew.

Were they as well dressed as the Association were?—No.

You did not think they were the Association?—I did not think them the Association, they were seemingly a lower class of people.

When you went along in your procession you had not all of you sticks?—I had no stick, and my few friends who accompanied me from home, four of them had none.

Cross-examined by Mr. Attorney General.

Did you march in the London division?—Yes.

I fancy you did not know one hundredth part of them?—I do not know that I did.

By whose directions did you march?—There were some gentlemen that gave orders, but the gentlemen I did not know.

The body were in march I fancy before you got into the field?—No.

You did not get into the field till twelve o'clock?—No, not till thenabouts, after I got there they formed themselves into a circle, and marched over the fields.

Was the petition carried before your division?—It was.

Did you get into the lobby of the House of Commons?—I did not, nor did not attempt it.

Court. When you came back again, you saw a great number of people that were riotous, had they blue cockades or not?—I cannot positively say, to the best of my recollection some had.

Sir James Lowther,* bart. sworn.

Examined by Mr. Kenyon.

You were at the House of Commons on the 2d of June?—I don't recollect exactly the day, I was there at the time the petition was presented.

Do you recollect seeing lord George Gordon there?—Yes. I went out of the House after the guards came, and the mob was dispersed; sir Philip Clerke went along with me; we met the guards in the lobby; I spoke to sir Philip Clerke, and desired we might come back into the House. I sat upon the bench opposite the Treasury-bench. Sir George Savile, as well as I can recollect, was upon my left, sir Philip Clerke upon my right. Lord John Cavendish got up to speak relative to some insult he had received from a soldier; he said it put him in mind of the times of Oliver Cromwell. In short, a soldier had got hold of his collar, and had insulted him. Lord George Gordon said to me,

* Afterwards earl of Lonsdale.

"Have you a carriage?" I said, "Yes, I have." He asked, "Are you engaged?" I said "I would carry sir Philip Clerke." He said, "If you have room give me leave to go along with you." I told him I should be glad of his company, but I said, "Let us stay a little longer." Lord George Gordon was for going away before. After this I got up to go away; sir George Savile and sir Philip Clerke got up to come away at the same time. We came out of the House; sir George Savile came down to this door that opens into Westminster-hall; we went down towards Mrs. Bennett's room the other way. When I came into that room there was no person there but sir John Irwin, waiting for his carriage. Colonel Luttrell came in, and as I recollect he had a blue cockade in his hat; none of us had: he took out sir John Irwin. After that we went into my carriage; as soon as we got into the carriage, some of the people that were still remaining, who were supposed to be the mob, came about the carriage, and asked, "Is the bill to be repealed?" Lord George Gordon said, "I do not know, I hope it will, but go home, be quiet, make no riot, nor noise." Very little conversation passed in the coach. I carried sir Philip Clerke to the top of St. James's street; when we got there, sir Philip desired to take a hackney-coach and go home. I asked lord George Gordon where he desired to be set down? He said at his own house. I said, you seem tired. He said, very much so. I believe he was rather sleepy during the whole time he was there. I said afterwards, you had better let the coach set me down and then it shall carry you home. It set me down at my own house, and afterwards went home with him.

Cross-examined by Mr. Solicitor General.

A small number I suppose was remaining of the mob at the time you went away?—I can hardly say. I remember extremely well lord George Gordon said to the people, "For God's sake go home and be quiet, make no riot and noise."

Can you form any judgment what number of people there might be?—It was dark and the guards were come. When I was in the lobby, upon a division there were but seven of us for hearing the Petition. I met one of the justices, I do not know who he was, in the lobby. I was relating to the gentlemen who were there, that there was a prodigious smell in the lobby, the lobby was very disagreeable. I asked the justice if he had any difficulty in getting the people out? He said he had no difficulty.

Mr. Attorney General. You cannot go into evidence of what he said.

Mrs. Youd sworn.

Examined by Mr. Kenyon.

I believe you were a servant of lord George Gordon's in the month of June last?—Yes.

And are you now?—Yes, I am.

Do you remember his lordship's coming home on the 3d of June?—Yes.

At what time in the evening did he come home?—A quarter before eleven o'clock.

Did he go out any more that night?—No, he did not.

Cross-examined by Mr. Solicitor General.

Do you recollect whether lord George Gordon left his house upon the Saturday, Sunday, and Monday, or on either of those days?—My lord was at home Saturday, Sunday, and Monday.

You saw him at home those days?—I did.

You saw him upon every one of them?—Yes.

You are sure of it?—I am sure of it.

Court. Do you mean that his lordship did not go out on Saturday, Sunday, or Monday, or only that he was at home some part of those days?—A. He was at home some part of the days.

Mr. Erskine. We are ready, if the Court think it material, to go into evidence to shew where his lordship was every hour and every minute of those days.

Mr. Alderman Pugh sworn.

Examined by Mr. Kenyon.

I believe you were last year one of the sheriffs of the city of London?—I was.

Do you recollect being in the month of June with lord George Gordon in a coach?—I remember it very well. I hope you will excuse me if I should not be more particular in every transaction; it never entered my thoughts that I should come here; but the substance I can remember very well.

Do you recollect what day of the month it was?—It was on Wednesday the 7th, I believe, about the hour of three o'clock in the afternoon.

His lordship being in the same coach with you, did any person come to the side of the coach?—A young man came with half a sheet of paper that was written upon; he seemed to be in great agony; he desired the prisoner to set his name to it; he said "his house or houses were in danger of being destroyed, and he wished his lordship would sign the paper;" now I am not quite clear whether his lordship asked my opinion about it or no, and whether I looked at it, but his lordship did sign it.

I believe you signed a paper as well as lord George Gordon?—No, never.

It was signed immediately after it was brought to his lordship?—I believe his lordship made some stop at first, but he signed it; whether he asked me any question about it I do not remember, but his lordship did sign it, and the man seemed to go away happy.

Are you sure you signed no papers in the nature of protections?—I am clear of that.

The Hon. Thomas Erskine :*

Gentlemen of the Jury;† Mr. Kenyon, having informed the Court that we propose to call no other witnesses, it is now my duty to address myself to you, as counsel for the noble prisoner at the bar, the whole evidence being closed;—I use the word closed, because it is certainly not finished, since I have been obliged to leave the place in which I sat,|| to disentangle myself from the volumes of men's names, which lay there under my feet, whose testimony, had it been necessary for the defence, would have confirmed all the facts that are already in evidence before you.

Gentlemen, I feel myself entitled to expect, both from you and from the Court, the greatest indulgence and attention;—I am, indeed, a greater object of your compassion, than even my noble friend whom I am defending. He rests secure in conscious innocence, and in the well-placed assurance, that it can suffer no stain in your hands:—not so with me;—I stand up before you a troubled, I am afraid a *guilty* man, in having presumed to accept of the awful task, which I am now called upon to perform;—a task, which my learned friend who spoke before me, though he has justly risen by extraordinary capacity and experience to the highest rank in his profession, has spoken of with that distrust and diffidence, which becomes every Christian in a cause of blood. If Mr. Kenyon has such feelings, think what mine must be?—Alas! gentlemen, who am I?—a young man of little experience, unused to the bar of criminal courts, and sinking under the dreadful consciousness of my defects. I have however this consolation, that no ignorance nor inat-

* From this speech the learned and discriminating reviewer of 'Lord Erskine's Speeches' (see 16 Edinburgh Review, 102) says, "We are unable to extract any passages which can give a just notion of its character and high merits; for these consist, not in dazzling sentences, nor in particular bursts of eloquence, but in the close texture of the whole argument, both where Mr. Erskine lays down the principles of treason-law,—skilfully adapting them to his purpose, by bringing forward such parts chiefly as suit his case,—and illustrating them by a reference to circumstances like those he had himself to deal with, and where he more particularly and more directly makes the application of those doctrines to the charges against Lord George Gordon. The whole speech must be read, and even carefully studied, before a just sense of the talents displayed in it can be entertained, or a conjecture formed of its great effects upon the audience who heard it, and the tribunal to which it was addressed."

† In the following account of Mr. Erskine's speech, I have availed myself of the report of it in the second edition of Mr. Ridgway's Collection of Lord Erskine's Speeches.

‡ Afterwards Lord Kenyon, and Chief Justice of the Court of King's-bench.

|| Mr. Erskine sat originally in the front row, under which there were immense piles of papers; and he retired back before he began to address the Jury.

tention on my part, can possibly prevent you from seeing, under the direction of the judges, that the crown has established no case of treason.

Gentlemen, I did expect, that the Attorney General, in opening a great and solemn state prosecution, would have at least indulged the advocates for the prisoner with his notions on the law, as applied to the case before you, in less general terms.—It is very common indeed, in little civil actions, to make such obscure introductions by way of trap;—but in criminal cases, it is unusual and unbecoming; because the right of the crown to reply, even where no witnesses are called by the prisoner, gives it thereby the advantage of replying, without having given scope for observations on the principles of the opening, with which the reply must be consistent.

One observation he has, however, made on the subject, in the truth of which I heartily concur, viz. That the crime, of which the noble person at your bar stands accused, is the very *highest* and most *atrocious* that a member of civil life can possibly commit; because it is not, like all other crimes, merely an *injury* to society from the breach of some of its reciprocal relations, but is an attempt *utterly to dissolve and destroy society altogether*.

In nothing therefore is the wisdom and justice of our laws so strongly and eminently manifested, as in the *rigid, accurate, cautious, explicit, unequivocal* definition of what shall constitute this high offence;—for, high treason consisting in the breach and dissolution of that allegiance, which binds society together, if it were left ambiguous, uncertain, or undefined, all the other laws established for the personal security of the subject would be utterly useless;—since this offence, which, from its nature, is so capable of being created and judged of, by rules of political expediency on the spur of the occasion, would be a rod at will to bruise the most virtuous members of the community, whenever virtue might become troublesome or obnoxious to a bad government.

Injuries to the persons and properties of our neighbours, considered as individuals, which are the subjects of all other criminal prosecutions, are not only capable of greater precision, but the powers of the state can be but rarely interested in straining them, beyond their legal interpretation;—but if *treason, where the government itself is directly offended*, were left to the judgment of its ministers, without any boundaries,—nay, without the most *broad, distinct, and inviolable* boundaries marked out by law,—there could be no public freedom,—and the condition of an Englishman would be no better than a slave's at the foot of a sultan; since there is little difference whether a man dies by the stroke of a sabre, without the forms of a trial, or by the most pompous ceremonies of justice, if the crime could be made at pleasure by the state to fit the fact that was to be tried.

Would to God, gentlemen of the jury, that this were an observation of theory alone, and that the page of our history were not blotted with so many melancholy disgraceful proofs of its truth!—but these proofs, melancholy and disgraceful as they are, have become glorious monuments of the wisdom of our fathers, and ought to be a theme of rejoicing and emulation to us; since from the mischiefs constantly arising to the state from every extension of the ancient law of treason, the ancient law of treason has been always restored, and the constitution at different periods washed clean,—though unhappily with the blood of oppressed and innocent men.

When I speak of the ancient law of treason, I mean the venerable statute of king Edward the third, on which the indictment you are now trying is framed;—a statute made, as its preamble sets forth, for the more precise definition of this crime, which had not, by the common law, been sufficiently explained; and consisting of different and distinct members, the plain *unextended letter* of which was thought to be a sufficient protection to the person and honour of the sovereign, and an adequate security for the laws committed to his execution. I shall mention only two of the number, the others not being in the remotest degree applicable to the present accusation.

To compass, or imagine the death of the king; such imagination, or purpose of the mind (visible only to its great Author), being manifested by some *open act*; an institution obviously directed, not only to the security of his natural person, but to the stability of the government; the life of the prince being so interwoven with the constitution of the state, that an attempt to destroy the one, is justly held to be a rebellious conspiracy against the other.

Secondly, which is the crime charged in the indictment, *To levy war against him in his realm*;—a term that one would think could require no explanation, nor admit of any ambiguous construction amongst men, who are willing to read laws according to the plain signification of the language, in which they are written; but which has nevertheless been an abundant source of that constructive cavil, which this sacred and valuable act was made expressly to prevent. The real meaning of this branch of it, as it is bottomed in policy, reason, and justice,—as it is ordained in plain unambiguous words,—as it is confirmed by the precedents of justice, and illustrated by the writings of the great lights of the law, in different ages of our history, I shall, before I sit down, impress upon your minds as a safe, unerring standard, by which to measure the evidence you have heard. At present I shall only say, that far and wide as judicial decisions have strained the construction of levying war, beyond the warrant of the statute, to the discontent of some of the greatest ornaments of the profession, they hurt not

me;—as a citizen I may disapprove of them,—but as advocate for the noble person at your bar, I need not impeach their authority; because none of them have said more than this,—that war may be levied against the king in his realm, not only by an insurrection to change, or to destroy the fundamental constitution of the government itself by rebellious war, but, by the same war, to endeavour to suppress the execution of the laws it has enacted, or to violate and overbear the protection they afford, not to individuals (which is a private wrong), but to any general class or description of the community, by **PREMEDITATED OPEN ACTS OF VIOLENCE, HOSTILITY, AND FORCE.**

Gentlemen, I repeat these words, and call solemnly on the judges to attend to what I say, and to contradict me if I mistake the law,—**BY PREMEDITATED, OPEN ACTS OF VIOLENCE, HOSTILITY, AND FORCE**;—nothing equivocal;—nothing ambiguous;—no intimidations, or overawings, which signify nothing precise or certain, because what frightens one man, or set of men, may have no effect upon another;—but that which **COMPELS AND COERCES**;—**OPEN VIOLENCE AND FORCE.**

Gentlemen, this is not only the whole text, but, I submit it to the learned judges, under whose correction I am happy to speak, an accurate explanation of the statute of treason, as far as it relates to the present subject, taken in its utmost extent of judicial construction, and which you cannot but see not only in its letter, but in its most strained signification, is confined to acts which *immediately,—openly,—and unambiguously*, strike at the very root and being of government, and not to any other offences, however injurious to its peace.

Such were the boundaries of high treason marked out in the reign of Edward the third; and as often as the vices of bad princes, assisted by weak submissive parliaments, extended state offences beyond the strict letter of that act, so often the virtue of better princes and wiser parliaments brought them back again.

A long list of new treasons, accumulated in the wretched reign of Richard the second, from which (to use the language of the act that repealed them) “no man knew what to do or say for doubt of the pains of death,” were swept away in the first year of Henry the fourth, his successor; and many more, which had again sprung up in the following distracted arbitrary reigns, putting tumults and riots on a footing with armed rebellion, were again levelled in the first year of queen Mary, and the statute of Edward made once more the standard of treasons.—The acts indeed for securing his present majesty’s illustrious house from the machinations of those very Papists, *who are now so highly in favour*, have since that time been added to the list; but these not being applicable to the present case, the ancient statute is still our only

guide; which is so plain and simple in its object, so explicit and correct in its terms, as to leave no room for intrinsic error; and the wisdom of its authors has shut the door against all extension of its plain letter; declaring in the very body of the act itself, that nothing out of that plain letter should be brought within the pale of treason by inference or construction, but that, if any such cases happened, they should be referred to the parliament.

This wise restriction has been the subject of much just eulogium by all the most celebrated writers on the criminal law of England. Lord Coke says,—The parliament that made it was on that account called *Benedictum* or *Blessed*: and the learned and virtuous judge Hale, a bitter enemy and opposer of constructive treasons, speaks of this sacred institution with that enthusiasm, which it cannot but inspire in the breast of every lover of the just privileges of mankind.

Gentlemen, in these mild days, when juries are so free, and judges so independent, perhaps all these observations might have been spared as unnecessary;—but they can do no harm; and this history of treason, so honourable to England, cannot (even imperfectly as I have given it) be unpleasant to Englishmen. At all events, it cannot be thought an inapplicable introduction to saying, that lord George Gordon, who stands before you indicted for that crime,—is not,—cannot be guilty of it, unless he has levied war against the king in his realm, contrary to the plain letter, spirit, and intention of the Act of the 25th of Edward the 3rd; to be extended by no new or occasional constructions,—to be strained by no fancied analogies,—to be measured by no rules of political expediency,—to be judged of by no theory,—to be determined by the wisdom of no individual, however wise,—but to be expounded by the simple, genuine LETTER of the law.

Gentlemen, the only overt act charged in the indictment is—the assembling the multitude, which we all of us remember went up with the petition of the associated Protestants on the 2nd day of last June; and in addressing myself to a humane and sensible jury of Englishmen, sitting in judgment on the life of a fellow-citizen, more especially under the direction of a court so filled as this is, I trust I need not remind you, that the purposes of that multitude, as originally assembled on that day, and the purposes and acts of him who assembled them, are the sole objects of investigation; and that all the dismal consequences which followed, and which naturally link themselves with this subject in the firmest minds, must be altogether cut off, and abstracted from your attention,—*further than the evidence warrants their admission*. Indeed, if the evidence had been co-extensive with these consequences;—if it had been proved that the same multitude, under the direction of lord George Gordon, had afterwards at-

tacked the Bank,—broke open the prisons,—and set London in a conflagration, I should not now be addressing you.—Do me the justice to believe, that I am neither so foolish as to imagine I could have defended him, nor so profligate as to wish it if I could.—But when it has appeared, not only by the evidence in the cause, but by the evidence of the thing itself,—BY THE ISSUES OF LIFE, WHICH MAY BE CALLED THE EVIDENCE OF HEAVEN, that these dreadful events were either entirely unconnected with the assembling of that multitude to attend the petition of the Protestants, or, at the very worst, the unforeseen, undesigned, unabettèd, and deeply regretted consequences of it, I confess the seriousness and solemnity of this trial sink and dwindle away.—Only abstract from your minds all that misfortune, accident, and the wickedness of others have brought upon the scene; and the cause requires no advocate.—When I say that it requires no advocate, I mean that it requires no argument to screen it from the guilt of *treason*: for though I am perfectly convinced of the purity of my noble friend's intentions, yet I am not bound to defend his prudence, nor to set it up as a pattern for imitation; since you are not trying him for imprudence, for indiscreet zeal, or for want of foresight and precaution, but for a deliberate and malicious predetermination to overpower the laws and government of his country, by HOSTILE, REBELLIOUS FORCE.

The indictment therefore first charges, that the multitude, assembled on the 2nd of June, “WERE ARMED AND ARRAYED IN A WARLIKE MANNER:” which indeed, if it had omitted to charge, we should not have troubled you with any defence at all, because no judgment could have been given on so defective an indictment; for the statute never meant to put an unarmed assembly of citizens on a footing with armed rebellion; and the crime, whatever it is, must always appear on the record to warrant the judgment of the court.

It is certainly true, that it has been held to be matter of evidence, and dependent on circumstances, what numbers, or species of equipment and order, though not the regular equipment and order of soldiers, shall constitute an army, so as to maintain the averment in the indictment of a warlike array; and likewise, what kinds of violence, though not pointed at the king's person, or the existence of the government, shall be construed to be war against the king: but as it has never yet been maintained in argument, in any court of the kingdom, or even speculated upon in theory, that a multitude, without either weapons offensive or defensive of any sort or kind, and yet not supplying the want of them by such acts of violence, as multitudes sufficiently great can achieve without them, was a hostile array within the statute;—as it has never been asserted by the wildest adventurer in constructive treason, that a multitude,—armed with nothing,—threatening

nothing,—and doing nothing, was an army levying war; I am entitled to say, that the evidence does not support the first charge in the indictment; but that, on the contrary, it is manifestly false;—false in the knowledge of the crown, which prosecutes it;—false in the knowledge of every man in London, who was not bed-ridden on Friday the 2nd of June, and who saw the peaceable demeanour of the associated Protestants.

But you will hear, no doubt, from the Solicitor General (*for they have saved all their intelligence for the reply*), that fury supplies arms;—*furor arma ministrat*;—and the case of Dammaree* will, I suppose, be referred to; where the people assembled, had no banners or arms, but only clubs and bludgeons: yet the ringleader, who led them on to mischief, was adjudged to be guilty of high treason for levying war. This judgment it is not my purpose to impeach, for I have no time for digression to points that do not press upon me.—In the case of Dammaree, the mob, though not regularly armed, were provided with such weapons as best suited their mischievous designs;—their designs were, besides, open and avowed, and all the mischief was done that could have been accomplished, if they had been in the completest armour;—they burnt dissenting meeting-houses protected by law, and Dammaree was taken at their head, *in flagrante delicto*, with a torch in his hand, not only in the very act of destroying one of them, but leading on his followers, *in person*, to the *avowed* destruction of all the rest.—There could therefore be no doubt of his purpose and intention, nor any great doubt that the perpetration of such purpose was, from its *generality*, high treason, if perpetrated by such a force, as distinguishes a felonious riot from a treasonable levying of war.—The principal doubt therefore in that case was, whether such an unarmed riotous force was war, within the meaning of the statute; and on that point very learned men have differed; nor shall I attempt to decide between them, because in this one point they all agree. *Gentlemen, I beseech you to attend to me here.*—I say on this point they all agree; that it is the INTENTION of assembling them, which forms the guilt of treason: I will give it you in the words of high authority,—the learned Foster; whose private opinions will, no doubt, be pressed upon you as doctrine and law, and which, if taken together, as all opinions ought to be, and not extracted in smuggled sentences to serve a shallow trick, I am contented to consider as authority.

That great judge, immediately after supporting the case of Dammaree, as a levying war within the statute, against the opinion of Hale, in a similar case, viz. the destruction of bawdy-houses, which happened in his time, says, “*The true criterion therefore seems to be*

quo animo did the parties assemble?—with what intention did they meet?”

On that issue, then, by which I am supported by the whole body of the criminal law of England;—concerning which there are no practical precedents of the courts that clash, nor even abstract opinions of the closet that differ, I come forth with boldness to meet the crown; for even supposing that peaceable multitude, though not hostilely arrayed,—though without one species of weapon among them,—though assembled without plot or disguise by a public advertisement, exhorting, nay commanding peace, and inviting the magistrates to be present to restore it, if broken:—though composed of thousands who are now standing around you, unimpeached and unproved, yet who are all principals in treason, if such assembly was treason; supposing, I say, this multitude to be nevertheless an army within the statute, still the great question would remain behind, on which the guilt or innocence of the accused must singly depend, and which it is your exclusive province to determine:—namely, whether they were assembled by my noble client, *for the traitorous purpose charged in the indictment?*—For war must not only be levied, but it must be levied against the king in his realm, i. e. either directly against his person to alter the constitution of the government, of which he is the head, or to suppress the laws committed to his execution, BY REBELLIOUS FORCE. You must find that lord George Gordon assembled these men *with that traitorous intention*:—you must find not merely a riotous illegal petitioning,—not a tumultuous, indecent importunity to influence parliament,—not the compulsion of motive, from seeing so great a body of people united in sentiment and clamorous supplication,—BUT THE ABSOLUTE, UNEQUIVOCAL COMPULSION OF FORCE, FROM THE HOSTILE ACTS OF NUMBERS UNITED IN REBELLIOUS CONSPIRACY AND ARMS.

THIS IS THE ISSUE YOU ARE TO TRY: for crimes of all denominations consist wholly in the purpose of the human will producing the act: *Actus non facit reum nisi mens sit reus*—The act does not constitute guilt, unless the mind be guilty. This is the great text from which the whole moral of penal justice is deduced: it stands at the top of the criminal page, throughout all the volumes of our humane and sensible laws; and lord chief justice Coke, whose chapter on this crime is the most authoritative and masterly of all his valuable works, ends almost every sentence with an emphatical repetition of it.

The indictment *must* charge an open act, because the purpose of the mind, which is the object of trial, can only be known by actions; or, again to use the words of Foster, who has ably and accurately expressed it, “the traitorous purpose is the treason, the overt act, the means made use of to effectuate the intentions of the heart.”—But why should I borrow the language of Foster, or of

* See it, Vol. 15, p. 521.

any other man, when the language of the indictment itself is lying before our eyes? What does it say?—Does it directly charge the overt act as in itself constituting the crime?—No.—It charges that the prisoner “*maliciously and traitorously did compass, imagine, and intend to raise and levy war and rebellion against the king;*”—this is the malice pre-pense of treason;—and that to fulfil and bring to effect *such traitorous compassings and intentions*, he did, on the day mentioned in the indictment, actually assemble them, and levy war and rebellion against the king.—Thus the law, which is made to correct and punish the wickedness of the heart, and not the unconscious deeds of the body, goes up to the fountain of human agency, and arraigns the lurking mischief of the soul, dragging it to light by the evidence of open acts.—The hostile *mind* is the crime; and, therefore, unless the matters which are in evidence before you, do, beyond all doubt or possibility of error, convince you that the prisoner is a determined traitor *in his heart*, he is not guilty.

It is the same principle which creates all the various degrees of homicide, from that which is excusable, to the malignant guilt of murder.—The fact is the same in all,—the death of the man is the imputed crime; but the *intention* makes all the difference; and he who killed him is pronounced a murderer,—a single felon,—or only an unfortunate man, as the circumstances, by which his mind is deciphered to the jury, show it to have been cankered by deliberate wickedness, or stirred up by sudden passions.

Here an immense multitude was, beyond all doubt, assembled on the 2d of June; but whether ~~he~~ that assembled them be guilty of high treason, of a high misdemeanor, or only of the breach of the act of king Charles the 2nd against tumultuous petitioning (if such an act still exists), depends wholly upon the evidence of his purpose in assembling them,—to be gathered by you, and *by you alone*, from the whole tenour of his conduct;—and to be gathered not by *inference* or *probability*, or reasonable *presumption*, but in the words of the act, *proveably*; that is, in the full unerring force of demonstration. You are called upon your oaths to say, *not* whether lord George Gordon assembled the multitudes in the place charged in the indictment, for that is not denied; but whether it appears by the facts produced in evidence for the crown, when confronted with the proofs which we have laid before you, that he assembled them *in hostile array, and with a hostile mind, to take the laws into his own hands by main force, and to dissolve the constitution of the government, unless his petition should be listened to by parliament*.

THAT,—it is *your* exclusive province to determine. The court can only tell you what acts the law, in its general theory, holds to be high treason, on the general assumption, that such acts proceed from traitorous pur-

poses: but they must leave it to *your* decision, and to *yours alone*, whether the acts proved appear, in the present instance, under all the circumstances, to have arisen from the causes which form the essence of this high crime.

Gentlemen, you have now heard the law of treason; first in the abstract, and secondly as it applies to the general features of the case: and you have heard it with as much sincerity as if I had addressed you upon my oath from the bench where the judges sit.—I declare to you solemnly, in the presence of that great Being, at whose bar we must all hereafter appear, that I have used no one art of an advocate, but have acted the plain unaffected part of a Christian man, instructing the consciences of his fellow-citizens to do justice. If I have deceived you on the subject, I am myself deceived;—and if I am misled through ignorance, my ignorance is incurable, for I have spared no pains to understand it. I am not stiff in opinions; but before I change any one of those that I have given you to-day, I must see some direct monument of justice that contradicts them: for the law of England pays no respect to theories, however ingenious, or to authors, however wise; and therefore, unless you hear me refuted by a series of *direct precedents*, and not by vague doctrine, if you wish to sleep in peace, *follow me*.

And now the most important part of our task begins, namely, the application of the evidence to the doctrines I have laid down; for trial is nothing more, than the reference of facts to a certain rule of action, and a long recapitulation of them only serves to distract and perplex the memory, without enlightening the judgment, unless the great standard principle by which they are to be measured is fixed, and rooted in the mind.—When that is done (which I am confident has been done by you), every thing worthy of observation falls naturally into its place, and the result is safe and certain.

Gentlemen, it is already in proof before you (indeed it is now a matter of history), that an act of parliament passed in the session of 1778, for the repeal of certain restrictions, which the policy of our ancestors had imposed upon the Roman Catholic religion, to prevent its extension, and to render its limited toleration harmless; restrictions, imposed *not* because our ancestors took upon them to pronounce that faith to be offensive to God, but because it was incompatible with good faith to man;—being utterly inconsistent with allegiance to a Protestant government, from their oaths and obligations, to which it gave them not only a release, but a crown of glory, as the reward of treachery and treason.

It was indeed with astonishment, that I heard the Attorney General stigmatize those wise regulations of our patriot ancestors with the title of factious and cruel impositions on the consciences and liberties of their fellow-citizens.—Gentlemen, they were *at the*

time wise and salutary regulations; regulations to which this country owes its freedom, and his majesty his crown;—a crown which he wears under the strict entail of professing and protecting that religion which they were made to repress;—and which I know my noble friend at the bar joins with me, and with all good men, in wishing, that he and his posterity may wear for ever.

It is not my purpose to recall to your minds the fatal effects, which bigotry has in former days produced in this island. I will not follow the example the crown has set me, by making an attack on your passions, on subjects foreign to the object before you;—I will not call your attention from those flames, kindled by a villainous banditti (which they have thought fit, in defiance of evidence, to introduce), by bringing before your eyes the more cruel flames, in which the bodies of our expiring, meek, patient, Christian fathers, were little more than two centuries ago consuming in Smithfield;—I will not call up from the graves of martyrs all the precious holy blood that has been spilt in this land to save its established government and its reformed religion, from the secret villainy, and the open force of Papists;—the cause does not stand in need even of such honest arts, and I feel my heart too big, voluntarily to recite such scenes, when I reflect that some of my own, and my best and dearest progenitors, from whom I glory to be descended, ended their innocent lives in prisons and in exile *only because they were Protestants*.

Gentlemen, whether the great lights of science and of commerce, which since those disgraceful times have illuminated Europe, may, by dispelling these shocking prejudices, have rendered the Papists of this day as safe and trusty subjects as those, who conform to the national religion established by law, I shall not take upon me to determine;—it is wholly unconnected with the present inquiry:—we are not trying a question either of divinity, or civil policy; and I shall therefore not enter at all into the motives or merits of the act, that produced the Protestant petition to parliament: it was certainly introduced by persons who cannot be named by any good citizen without affection and respect: but *this* I will say, without fear of contradiction—that it was sudden and unexpected;—that it passed with uncommon precipitation, considering the magnitude of the object;—that it underwent no discussion;—and that the heads of the church, the constitutional guardians of the national religion, were never consulted upon it.—Under such circumstances it is no wonder that many sincere Protestants were alarmed; and they had a right to spread their apprehensions; it is the privilege and *the duty* of all the subjects of England to watch over their religious and civil liberties, and to approach either their representatives or the throne with their fears and their complaints,—a privilege which has been bought with the dearest blood

of our ancestors, and which is confirmed to us by law, as our ancient birthright and inheritance.

Soon after the repeal of the act, the Protestant Association began, and from small beginnings extended over England and Scotland.—A deed of association was signed, *by all legal means* to oppose the growth of Popery; and which of the advocates for the crown will stand up, and say, that such an union was illegal? Their union was perfectly constitutional;—there was no obligation of secrecy;—their transactions were all public;—a committee was appointed for regularity and correspondence;—and circular letters were sent to all the dignitaries of the church, inviting them to join with them in the protection of the national religion:

All this happened before lord George Gordon was a member of, or the most distantly connected with it; for it was not till November 1779, that the London Association made him an offer of their chair, by an unanimous resolution communicated to him, *unsought and unexpected*, in a public letter signed by the secretary in the name of the whole body; and from that day to the day he was committed to the Tower, I will lead him by the hand in your view, that you may see there is no blame in him. Though all his behaviour was unreserved and public, and though watched by wicked men for purposes of vengeance, the crown has totally failed in giving it such a context, as can justify, in the mind of any reasonable man, the conclusion it seeks to establish.

This will fully appear hereafter; but let us first attend to the evidence on the part of the crown.

The first witness to support this prosecution is,

William Hay—a bankrupt in *fortune* he acknowledged himself to be, and I am afraid he is a bankrupt in *conscience*. Such a scene of impudent, ridiculous inconsistency, would have utterly destroyed his credibility, in the most trifling civil suit; and I am, therefore, almost ashamed to remind you of his evidence, when I reflect that you will never suffer it to glance across your minds on this solemn occasion.

This man, whom I may now, without offence or slander, point out to you as a dark Popish spy, who attended the meetings of the London Association, to pervert their harmless purposes, conscious that the discovery of his character would invalidate all his testimony, endeavoured at first to conceal the activity of his zeal, by denying that he had seen any of the destructive scenes imputed to the Protestants; yet almost in the same breath it came out, by his own confession, that there was hardly a place, public or private, where riot had erected her standard, in which he had not been; nor a house, prison, or chapel, that was destroyed, to the demolition of which he had not been a witness.—He was at Newgate, and

the Fleet, at Langdale's, and at Coleman-street;—at the Sardinian ambassador's, and in Great Queen-street, Lincoln's-Inn-fields. What took him to Coachmakers'-hall?—He went there, as he told us, to watch their proceedings, because he expected no good from them; and to justify his prophecy of evil, he said, on his examination by the crown, that as early as December he had heard some alarming republican language. What language did he remember?—“Why, that the ‘Lord Advocate of Scotland was called only ‘HARRY DUNDAS.’” Finding this too ridiculous for so grave an occasion, he endeavoured to put some words about the breach of the king's coronation oath into the prisoner's mouth, *as proceeding from himself*; which it is notorious he read out of an old Scotch book, published near a century ago, on the abdication of king James the 2d.

Attend to his cross-examination: he was sure he had seen lord George Gordon at Greenwood's room in January; but when Mr. Kenyon, who knew lord George had never been there, advised him to recollect himself, he desired to consult his notes.—First, he is positively sure, from his memory, that he had seen him there: then he says he cannot trust his memory without referring to his papers; on looking at them, they contradict him; and he then confesses, that he never saw lord George Gordon at Greenwood's room in January, when his note was taken, *nor at any other time*.—But *why* did he take notes?—He said it was, because he foresaw what would happen.—How fortunate the crown is, gentlemen, to have such friends to collect evidence by anticipation! *When* did he begin to take notes?—He said on the 21st of February, which was the *first* time he had been alarmed at what he had seen and heard, although not a minute before he had been reading a note taken at Greenwood's room in January, and had sworn that he attended their meetings, from apprehensions of consequences, as early as December.

Mr. Kenyon, who now saw him bewildered in a maze of falsehood, and suspecting his notes to have been a villanous fabrication to give the show of correctness to his evidence, attacked him with a shrewdness for which he was wholly unprepared.—You remember the witness had said, that he always took notes when he attended any meetings where he expected their deliberations might be attended with dangerous consequences. ‘Give me one instance,’ says Mr. Kenyon, ‘in the whole course of your life, where you ever took notes before.’ Poor Mr. Hay was thunder-struck;—the sweat ran down his face, and his countenance bespoke despair,—not recollection: “Sir, I must have an instance; tell me when and where?” Gentlemen, it was now too late; some instance he was obliged to

give, and, as it was evident to every body that he had one still to choose, I think he might have chosen a better. *He had taken notes at the General Assembly of the church of Scotland six-and-twenty years before*. What! did he apprehend dangerous consequences from the deliberations of the grave elders of the kirk?—Were they levying war against the king? At last, when he is called upon to say to whom he communicated the intelligence he had collected, the spy stood confessed indeed: at first he refused to tell, saying he was his friend, and that he was not obliged to give him up: and when forced at last to speak, it came out to be Mr. Butler, a gentleman universally known, and who, from what I know of him, I may be sure never employed him, or any other spy, because he is a man every way respectable, but who certainly is not only a Papist, but the person who was employed, in all their proceedings, to obtain the late indulgencies from parliament.—He said Mr. Butler was his particular friend, yet professed himself ignorant of his religion.—I am sure he could not be desired to conceal it;—Mr. Butler makes no secret of his religion;—it is no reproach to any man who lives the life he does; but Mr. Hay thought it of moment to his own credit in the cause, that *he himself* might be thought a Protestant, unconnected with Papists, and not a Popish spy.

So ambitious, indeed, was the miscreant of being useful in this odious character, through every stage of the cause, that after staying a little in St. George's-fields, he ran home to his own house in St. Dunstan's churchyard, and got upon the leads, where he swore he saw the very same man carrying the very same flag he had seen in the fields. Gentlemen, whether the petitioners employed the same standard-man through the whole course of their peaceable procession is certainly totally immaterial to the cause, but this circumstance is material to show the wickedness of the man. ‘How,’ says Mr. Kenyon, ‘do you know that it was the same person you saw in the fields?—Were you acquainted with him?’—‘No.’—How then?—Why, ‘he looked like a brewer's servant.’ *Like a brewer's servant!*—What, were they not all in their Sunday's clothes?—‘Oh! yes, they were all in their Sunday's clothes.’ Was the man with the flag then alone in the dress of his trade?—‘No.’—Then how do you know he was a brewer's servant?—Poor Mr. Hay—nothing but sweat and confusion again. At last, after a hesitation, which every body thought would have ended in his running out of court, he said, he knew him to be a brewer's servant, because there was something particular in the cut of his coat, the cut of his breeches, and the cut of his stockings.

You see, gentlemen, by what strange means villany is sometimes detected; perhaps he might have escaped from me, but he sunk under that shrewdness and sagacity, which ability, without long habits, does not provide.

* See his Case when Lord Melville, A. D. 1806, in this Collection.

Gentlemen, you will not, I am sure, forget, whenever you see a man, about whose apparel there is any thing particular, to set him down for a brewer's servant.

Mr. Hay afterwards went to the lobby of the House of Commons. What took him there?—He thought himself in danger; and therefore, says Mr. Kenyon, you thrust yourself voluntarily into the very centre of danger. *That would not do.*—Then he had a particular friend, whom he knew to be in the lobby, and whom he apprehended to be in danger.—“Sir, who was that particular friend?—Out with it:—Give us his name instantly.”—*All in confusion again. Not a word to say for himself: and the name of this person, who had the honour of Mr. Hay's friendship, will probably remain a secret for ever.*

It may be asked, are these circumstances material? and the answer is obvious:—THEY ARE MATERIAL; because when you see a witness running into every hole and corner of falsehood, and as fast as he is made to bolt out of one, taking cover in another, you will never give credit to what that man relates, as to any possible matter which is to affect the life or reputation of a fellow-citizen accused before you. God forbid that you should.—I might therefore get rid of this wretch altogether, without making a single remark on that part of his testimony, which bears upon the issue you are trying; but the crown shall have the full benefit of it all; I will defraud it of nothing he has said.—Notwithstanding all his folly and wickedness, let us for the present take it to be true, and see what it amounts to. What is it he states to have passed at Coachmakers'-hall?—That lord George Gordon desired the multitude to behave with unanimity and firmness, as the Scotch had done. Gentlemen, there is no manner of doubt that the Scotch behaved with unanimity and firmness, in resisting the relaxation of the penal laws against Papists, and that by that unanimity and firmness they succeeded;—but it was by the constitutional unanimity and firmness of the great body of the people of Scotland, whose example lord George Gordon recommended, and not by the riots and burning, which they attempted to prove had been committed in Edinburgh in 1778.

I will tell you myself, gentlemen, as one of the people of Scotland, that there then existed, and still exist, eighty-five societies of Protestants, who have been, and still are, uniformly firm in opposing every change in that system of laws, established to secure the Revolution, and parliament gave way in Scotland to their united voice, and not to the firebrands of the rabble. It is the duty of parliament to listen to the voice of the people;—for they are the servants of the people; and when the constitution of church or state is believed, whether truly or falsely, to be in danger, I hope there never will be wanting men (notwithstanding the proceedings of to-day) to desire the peo-

ple to persevere and be firm. Gentlemen, has the crown proved, that the Protestant brethren of the London Association fired the mass-houses in Scotland, or acted in rebellious opposition to law, so as to entitle it to wrest the prisoner's expressions into an excitation of rebellion against the state, or of violence against the properties of English Papists, by setting up their firmness as an example?—Certainly not. They have not even proved the naked fact of such violence, though such proof would have called for no resistance, since, to make it bear as rebellious advice to the Protestant Association of London, it must have been first shown, that such acts had been perpetrated or encouraged by the Protestant Societies in the North.

Who has dared to say this?—No man.—The rabble in Scotland certainly did that which has since been done by the rabble in England, to the disgrace and reproach of both countries; but in neither country was there found one man of character or condition, of any description, who abetted such enormities, nor any man, high or low, of any of the associated Protestants here or there, who were either convicted, tried, or taken on suspicion.

As to what this man heard, on the 29th of May, it was nothing more than the proposition of going up in a body to St. George's-fields, to consider how the Petition should be presented, with the same exhortations to firmness as before. The resolution made on the motion has been read; and when I come to state the evidence on the part of my noble friend, I will show you the impossibility of supporting any criminal inference, from what Mr. Hay afterwards puts in his mouth in the lobby, even taking it to be true. I wish here to be accurate [*looks on a card on which he had taken down his words*]; He says: ‘Lord George Gordon desired them to continue steadfastly to adhere to so good a cause as theirs was; promised to persevere in it himself, and hoped, though there was little expectation at present from the House of Commons, that they would meet with redress from their MILD AND GRACIOUS SOVEREIGN, who, no doubt, would recommend it to his ministers to repeal it.’ This was all he heard, and I will show you how this wicked man himself (if any belief is to be given to him) entirely overturns and brings to the ground the evidence of Mr. Bowen, on which the crown rests singly for the proof of words which are more difficult to explain. Gentlemen, was this the language of rebellion?—If a multitude were at the gates of the House of Commons, to command and insist on a repeal of this law,—why encourage their hopes, by reminding them that they had a mild and gracious sovereign?—If war was levying against him, there was no occasion for his mildness and graciousness. If he had said, *Be firm and persevere, we shall meet with redress from the PRUDENCE* of the sovereign, it might have borne a different construction; because, whether he was gra-

cious or severe, his prudence might lead him to submit to the necessity of the times. The words sworn to were, therefore, perfectly clear and unambiguous—*Persevere in your zeal and supplications, and you will meet with redress from a mild and gracious king, who will recommend it to his minister to repeal it.* Good God! if they were to wait till the king, whether from benevolence or fear, should direct his minister to influence the proceedings of parliament, how does it square with the charge of *instant coercion or intimidation of the House of Commons?*—If the multitude were assembled with the premeditated design of producing immediate repeal by terror or arms, is it possible to suppose, that their leader would desire them to be quiet, and refer them to those qualities of the prince, which, however eminently they might belong to him, never could be exerted on subjects in rebellion to his authority?—In what a labyrinth of nonsense and contradiction do men involve themselves, when, forsaking the rules of evidence, they would draw conclusions from words in contradiction to language, and in defiance of common sense!

The next witness that is called to you by the crown is Mr. Metcalf. He was not in the lobby, but speaks only to the meeting in Coachmakers' Hall, on the 29th of May, and in St. George's-fields. He says, that at the former, lord George reminded them, that the Scotch had succeeded by their unanimity,—and hoped that no one, who had signed the Petition, would be ashamed or afraid to show himself in the cause;—that he was ready to go to the gallows for it;—that he would not present the petition of a lukewarm people;—that he desired them to come to St. George's-fields, distinguished with blue cockades, and that they should be marshalled in four divisions. Then he speaks to having seen them in the fields, in the order which has been prescribed; and lord George Gordon in a coach, surrounded with a vast concourse of people, with blue ribbons, forming like soldiers, but was not near enough to hear, whether the prisoner spoke to them or not. Such is Mr. Metcalf's evidence,—and after the attention you have honoured me with, and which I shall have occasion so often to ask again on the same subject, I shall trouble you with but one observation, viz. that it cannot, without absurdity, be supposed, that if the assembly at Coachmakers'-hall had been such conspirators as they are represented, their doors would have been open to strangers, like this witness, to come in, to report their proceedings.

The next witness is Mr. ANSTRUTHER, who speaks to the language and deportment of the noble prisoner, both at Coachmakers'-hall on the 29th of May, and afterwards on the 2d of June, in the lobby of the House of Commons. It will be granted to me, I am sure, even by the advocates of the crown, that this gentleman, not only from the clearness and con-

sistency of his testimony, but from his rank and character in the world, is infinitely more worthy of credit than Mr. Hay, who went before him; and if the circumstances of irritation and confusion under which the rev. Mr. Bowen confessed himself to have heard and seen what he told you he heard and saw, be considered, I may likewise assert, without any offence to the reverend gentleman, and without drawing any parallel between their credits, that where their accounts of this transaction differ, the preference is due to the former. Mr. Anstruther very properly prefaced his evidence with this declaration: '*I do not mean to speak accurately to words; it is impossible to recollect them at this distance of time.*' I believe I have used his very expression, and such expression it well became him to use in a *case of blood*. But words, even if they could be accurately remembered, are to be admitted with *great reserve and caution*, when the purpose of the speaker is to be measured by them.—They are transient and fleeting; frequently the effect of a sudden transport,—easily misunderstood,—and often unconsciously misrepresented.—It may be the fate of the most innocent language, to appear ambiguous, or even malignant, when related in mutilated detached passages, by people to whom it is not addressed, and who know nothing of the previous design, either of the speaker, or of those to whom he spoke. Mr. Anstruther says, that he heard lord George Gordon desire the petitioners to meet him on the Friday following in St. George's-fields, and that if there were fewer than 20,000 people, he would not present the Petition, as it would not be of consequence enough;—and that he recommended to them the example of the Scotch, who, by their firmness, had carried their point.

Gentlemen, I have already admitted that they did by firmness carry it. But has Mr. Anstruther attempted to state any one expression, that fell from the prisoner, to justify the positive unerring conclusion, or even the presumption, that the *firmness* of the Scotch Protestants, by which the point was carried in Scotland, *was the resistance and riots of the rabble?*—No, gentlemen; he singly states the words, as he heard them in the Hall, on the 29th, and all that he afterwards speaks to in the lobby repels so harsh and dangerous a construction. The words sworn to at Coachmakers'-hall are, '*that he recommended temperance and firmness.*'—Gentlemen, if his motives are to be judged by words, for Heaven's sake let these words carry their popular meaning in language. Is it to be presumed, without proof, that a man means *one* thing, because he says *another?*—Does the exhortation of temperance and firmness apply most naturally, to the constitutional resistance of the Protestants of Scotland, or to the outrages of ruffians who pulled down the houses of their neighbours?—Is it possible, with decency, to say in a court of justice, that the

recommendation of temperance is the excitation to villany and frenzy? But the words, it seems, are to be construed, not from their own signification, but from that which follows them, viz. *by that the Scotch carried their point*. Gentlemen, Is it in evidence before you, that *by rebellion* the Scotch carried their point; or that the indulgences to Papists were not extended to Scotland, because the *rabble* had opposed their extension?—Has the crown authorized either the court, or its law servants, to tell you so?—Or can it be decently maintained, that parliament was so weak or infamous, as to yield to a wretched mob of vagabonds at Edinburgh, what it has since refused to the earnest prayers of an hundred thousand Protestants in London?—No, gentlemen of the jury, parliament was not, I hope, so abandoned.—But the ministers knew, that the Protestants in Scotland were, to a man, abhorrent of that law; and though they never held out resistance, if government should be disposed to cram it down their throats by force, yet such a violence to the united sentiments of a whole people appeared to be a measure so obnoxious, so dangerous, and withal so unreasonable, that it was wisely and judiciously dropped, to satisfy the general wishes of the nation, and not to avert the vengeance of those low incendiaries, whose misdeeds have rather been talked of than proved.

Thus, gentlemen, the exculpation of lord George's conduct, on the 29th of May, is sufficiently established by the very evidence, on which the crown ask you to convict him:—since in recommending *temperance and firmness after the example of Scotland*, you cannot be justified in pronouncing, that he meant more than the firmness of the grave and respectable people in that country, to whose constitutional firmness the legislature had before acceded, instead of branding it with the title of rebellion; and who, in my mind, deserve thanks from the king, for temperately and firmly resisting every innovation, which they conceived to be dangerous to the national religion, independently of which his majesty (without a new limitation by parliament) has no more title to the crown than I have.

Such, gentlemen, is the whole amount of all my noble friend's previous communications with the petitioners, whom he afterwards assembled to consider, how their Petition should be presented. This is all, not only that men of credit can tell you on the part of the prosecution, but all that even the worst vagabond, who ever appeared in a court,—the very scum of the earth,—thought himself safe in saying, upon oath, on the present occasion. Indeed, gentlemen, when I consider my noble friend's situation, his open, unreserved temper, and his warm and animated zeal for a cause, which rendered him obnoxious to so many wicked men;—speaking daily and publicly to mixed multitudes of

friends and foes, on a subject which affected his passions, I confess, I am astonished that no other expressions, than those in evidence before you, have found their way into this court.—That they have not found their way is surely a most satisfactory proof that there was nothing in his heart, which even youthful zeal could magnify into guilt, or that want of caution could betray.

Gentlemen, Mr. Anstruther's evidence, when he speaks of the lobby of the House of Commons, is very much to be attended to. He says, '*I saw lord George leaning over the gallery,*' which position, joined with what he mentioned of his talking with the chaplain, marks the time, and casts a strong doubt on Bowen's testimony, which you will find stands, in this only material part of it, single and unsupported. '*I then heard him,*' continues Mr. Anstruther, '*tell them, they had been called a mob, in the House, and that peace officers had been sent to disperse them peaceable petitioners: but that by steadiness and firmness they might carry their point; as he had no doubt his majesty, who was a gracious prince, would send to his ministers to repeal the act, when he heard his subjects were coming up for miles round, and wishing its repeal.*' How coming up?—In rebellion and arms to compel it?—No!—All is still put on the *graciousness* of the sovereign, in listening to the unanimous wishes of his people. If the multitude then assembled had been brought together to intimidate the House by their firmness, or to coerce it by their numbers, it was ridiculous to look forward to the king's influence over it, when the collection of future multitudes should induce him to employ it. The expressions were therefore quite unambiguous, nor could malice itself have suggested another construction of them, were it not for the fact, that the House was at that time surrounded, not by the petitioners, whom the noble prisoner had assembled, but by a mob who had mixed with them, and who therefore, when addressed by him, were instantly set down as his followers.—He thought he was addressing the sober members of the Association, who, by steadiness and perseverance, could understand nothing more than perseverance in that conduct he had antecedently prescribed, since *steadiness* signifies an uniformity, not a change of conduct; and I defy the crown to find out a single expression, from the day he took the chair of the Association, to the day I am speaking of, that justifies any other construction of *steadiness* and *firmness*, than that which I put upon it before. What would be the feelings of our venerable ancestors, who framed the statute of treasons to prevent their children being drawn into the snares of death, unless *proveably* convicted by overt acts, if they could hear us disputing, whether it was treason to desire harmless unarmed men to be firm and of good heart, and to trust to the *graciousness* of their king?

Here Mr. Anstruther closes his evidence, which leads me to Mr. Bowen, who is the only man—I beseech you, gentlemen of the jury, to attend to this circumstance—Mr. Bowen is the only man who has attempted, directly or indirectly, to say, that lord George Gordon uttered a syllable to the multitude in the lobby, concerning the destruction of the mass-houses in Scotland.—Not one of the crown's witnesses, not even the wretched abandoned Hay, who was kept, as he said, in the lobby, the whole afternoon, from anxiety for his pretended friend, has ever glanced at any expression resembling it.—They all finish with the expectation which he held out, from a mild and gracious sovereign. Mr. Bowen alone goes on further, and speaks of the successful riots of the Scotch;—but speaks of them in such a manner, as, so far from conveying the hostile idea, which he seemed sufficiently desirous to convey, tends directly to wipe off the dark hints and insinuations, which have been made to supply the place of proof upon that subject,—a subject which should not have been touched on, without the fullest support of evidence, and where nothing but the most unequivocal evidence ought to have been received. He says, his lordship began, by bidding them be QUIET,—PEACEABLE,—and STEADY—not steady alone;—though if that had been the expression, singly by itself, I should not be afraid to meet it;—but be quiet, peaceable, and steady. Gentlemen, I am indifferent what other expressions of dubious interpretation are mixed with these, for you are trying whether my noble friend came to the House of Commons with a decidedly hostile mind; and as I shall, on the recapitulation of our own evidence, trace him in your view without spot or stain, down to the very moment when the imputed words were spoken, you will hardly forsake the whole innocent context of his behaviour, and torture your inventions to collect the blackest system of guilt, starting up in a moment, without being previously concerted, or afterwards carried into execution.

First, what are the words by which you are to be convinced, that the legislature was to be frightened into compliance, and to be coerced if terror should fail? 'Be quiet,—PEACEABLE,—and steady;—You are a good people;—Yours is a good cause:—His majesty is a GRACIOUS monarch, and when he hears that all his people, ten miles round, are collecting, he will send to his ministers to repeal the act.' By what rules of construction can such an address to unarmed, defenceless men, be tortured into treasonable guilt? It is impossible to do it without pronouncing, even in the total absence of all proof of fraud or deceit in the speaker, THAT QUIET SIGNIFIES TUMULT AND UPROAR, AND THAT PEACE SIGNIFIES WAR AND REBELLION.

I have before observed, that it was most important for you to remember, that with this exhortation to quiet and confidence in

the king, the evidence of all the other witnesses closed; even Mr. Anstruther, who was a long time afterwards in the lobby, heard nothing further; so that if Mr. Bowen had been out of the case altogether, what would the amount have been?—Why simply, that lord George Gordon having assembled an unarmed, inoffensive multitude in St. George's-fields, to present a petition to parliament, and finding them becoming tumultuous, to the discontent of parliament, and the discredit of the cause, desired them not to give it up, but to continue to shew their zeal for the legal object in which they were engaged;—to manifest that zeal quietly and peaceably, and not to despair of success; since, though the House was not disposed to listen to it, they had a GRACIOUS sovereign, who would second the wishes of his people. This is the sum and substance of the whole. They were not, even by any one ambiguous expression, encouraged to trust to their numbers, as sufficient to overawe the House, or to their strength to compel it, nor to the prudence of the state in yielding to necessity,—but to the indulgence of the king, in compliance with the wishes of his people. Mr. Bowen however thinks proper to proceed; and I beg that you will particularly attend to the sequel of his evidence. He stands single, in all the rest that he says, which might entitle me to ask you absolutely to reject it;—but I have no objection to your believing every word of it, if you can; because, if inconsistencies prove any thing, they prove, that there was nothing of that deliberation in the prisoner's expressions which can justify the inference of guilt. I mean to be correct as to his words, [looks at his words, which he had taken down on a card.] He says, 'That lord George told the people, that an attempt had been made to introduce the bill into Scotland, and that they had no redress till the mass-houses were pulled down. That lord Weymouth then sent official assurances that it should not be extended to them.' Gentlemen, why is Mr. Bowen called by the crown to tell you this? The reason is plain,—because the crown, conscious that it could make no case of treason from the rest of the evidence, in the sober judgment of law,—aware that it had proved no purpose or act of force against the House of Commons, to give countenance to the accusation, much less to warrant a conviction, found it necessary to hold up the noble prisoner, as the wicked and cruel author of all those calamities, in which every man's passions might be supposed to come in to assist his judgment to decide.—They therefore made him speak in enigmas to the multitude; not telling them to do mischief in order to succeed, but that by mischief in Scotland success had been obtained.

But were the mischiefs themselves, that did happen here, of a sort to support such conclusion?—Can any man living, for instance, believe that lord George Gordon could pos-

sibly have excited the mob to destroy the house of that great and venerable magistrate, who has presided so long in this high tribunal, that the oldest of us do not remember him with any other impression, than the awful form and figure of justice:—a magistrate, who had always been the friend of the Protestant Dissenters, against the ill-timed jealousies of the establishment—his countryman too—and, without adverting to the partiality not unjustly imputed to men of that country, a man of whom any country might be proud?—No, gentlemen, it is not credible, that a man of noble birth, and liberal education (unless agitated by the most implacable personal resentment, which is not imputed to the prisoner) could possibly consent to the burning of the house of lord Mansfield.*

If Mr. Bowen therefore had ended here, I can hardly conceive such a construction could be decently hazarded, consistent with the testimony of the witnesses we have called; how much less, when, after the dark insinuations which such expressions might otherwise have been argued to convey, the very same person, on whose veracity or memory they are only to be believed, and who must be credited or discredited *in toto*, takes out the sting himself, by giving them such an immediate context and conclusion, as renders the proposition ridiculous, which his evidence is brought forward to establish; for he says, that lord George Gordon instantly afterwards addressed himself thus:—*Beware of evil-minded persons, who may mix among you and do mischief, the blame of which will be imputed to you.*

Gentlemen, if you reflect on the slander, which I told you fell upon the Protestants in Scotland by the acts of the rabble there, I am sure you will see the words are capable of an easy explanation. But as Mr. Bowen concluded with telling you, that he heard them in the midst of noise and confusion, and as I can only take them from *him*, I shall not make an attempt to collect them into one consistent discourse, so as to give them a decided meaning in favour of my client, because I have repeatedly told you, that words, imperfectly heard and partially related, cannot be so reconciled. But this I will say—that he must be a *ruffian* and not a lawyer, who would dare to tell an English jury, that such ambiguous words, hemmed closely in between others not only innocent, but meritorious, are to be adopted to constitute guilt, by rejecting both introduction and sequel, with which they are absolutely irreconcilable and inconsistent: for if ambiguous words, when coupled with actions, decipher the mind of the actor, so as to establish the presumption of guilt, will not such as are plainly innocent and unambiguous go as far to repel such presump-

tion?—Is innocence more difficult of proof than the most malignant wickedness?—Gentlemen, I see your minds revolt at such shocking propositions—I beseech you to forgive me; I am afraid that my zeal has led me to offer observations, which I ought in justice to have believed every honest mind would suggest to itself with pain and abhorrence, without being illustrated and enforced.

I now come more minutely to the evidence on the part of the prisoner.

I before told you, that it was not till November 1779, when the Protestant Association was already fully established, that lord George Gordon was elected president by the unanimous voice of the whole body, unlooked for and unsolicited; and it is surely not an immaterial circumstance, that at the very first meeting where his lordship presided, a dutiful and respectful petition, the same which was afterwards presented to parliament, was read and approved of;—a petition, which, so far from containing any thing threatening or offensive, conveyed *not a very oblique reflection* upon the behaviour of the people in Scotland; taking notice that as England and that country were now one, and as official assurances had been given that the law should not pass *THERE*, they hoped the *peaceable and constitutional deportment of the English Protestants* would entitle them to the approbation of parliament.

It appears by the evidence of Mr. Erasmus Middleton, a very respectable clergyman, and one of the committee of the Association, that a meeting had been held on the 4th of May, at which lord George was not present:—That at that meeting a motion had been made for going up with the petition in a body, but which not being regularly put from the chair, no resolution was come to upon it:—and that it was likewise agreed on, but in the same irregular manner, that there should be no other public meeting, previous to the presenting the petition;—that this last resolution occasioned great discontent, and that lord George was applied to by a large and respectable number of the Association to call another meeting, to consider of the most prudent and respectful method of presenting their petition: but it appears that, before he complied with their request, he consulted with the committee on the propriety of compliance, who all agreeing to it, except the secretary, his lordship advertised the meeting, which was afterwards held on the 29th of May. The meeting was therefore the act of the *whole* Association; and as to the original difference between my noble friend and the committee, on the expediency of the measure, it is totally immaterial; since Mr. Middleton, who was one of the number who differed from him on that subject (and whose evidence is therefore infinitely more to be relied on), told you, that his whole deportment was so clear and unequivocal, as to entitle him to assure you, on his most solemn oath, that he in his conscience believed his views were

* The house of this venerable nobleman in Bloomsbury-square, was one of the first that was attacked by the mob.—Orig. Ed. See the trial of Maskall at the end of this case.

perfectly constitutional and pure. This most respectable clergyman further swears, that he attended all the previous meetings of the society, from the day the prisoner became president to the day in question, and that knowing they were objects of much jealousy and malice, he watched his behaviour with anxiety, lest his zeal should furnish matter for misrepresentation;—but that he never heard an expression escape him which marked a disposition to violate the duty and subordination of a subject, or which could lead any man to believe, that his objects were different from the avowed and legal objects of the Association. We could have examined thousands to the same fact, for, as I told you when I began to speak, I was obliged to leave my place to disencumber myself from their names.

This evidence of Mr. Middleton's, as to the 29th of May, must, I should think, convince every man how dangerous and unjust it is, in witnesses, however perfect their memories, or however great their veracity, to come into a criminal court where a man is standing for his life or death, retailing scraps of sentences, which they had heard by thrusting themselves, from curiosity, into places where their business did not lead them;—ignorant of the views and tempers of both speakers and hearers, attending only to a part, and, perhaps innocently, misrepresenting that part, from not having heard the whole.

The witnesses for the crown all tell you, that lord George said he would not go up with the petition unless he was attended by 20,000 people who had signed it: and *there* they think proper to stop, as if he had said nothing *further*; leaving you to say to yourselves—What possible purpose could he have in assembling such a multitude, on the very day the House was to receive the petition?—Why should he urge it, when the committee had before thought it inexpedient?—And why should he refuse to present it unless he was so attended? Hear what Mr. Middleton says;—He tells you, that my noble friend informed the petitioners, that if it was decided they were *not* to attend to consider how their petition should be presented, he would with the greatest pleasure go up with it *alone*; but that, if it was resolved they should attend it in person, he expected 20,000 at the least should meet him in St. George's-fields, for that otherwise the petition would be considered as a forgery; it having been thrown out in the House and elsewhere, that the repeal of the Bill was not the serious wish of the people at large, and that the petition was a mere list of names in parchment, and not of men in sentiment.—Mr. Middleton added, That lord George adverted to the same objections having been made to many other petitions, and he therefore expressed an anxiety to show parliament, how many were actually interested in its success, which he reasonably thought would be a strong inducement to the House to listen to it. The language imputed to him

falls in most naturally with this purpose: 'I wish Parliament to see who, and what you are; dress yourselves in your best clothes'—which Mr. Hay (who, I suppose, had been reading the indictment) thought it would be better to call, *ARRAY YOURSELVES*.—He desired that not a stick should be seen among them, and that if any man insulted another, or was guilty of any breach of the peace, he was to be given up to the magistrates. Mr. Attorney General, to persuade you that this was all colour and deceit, says, How was a magistrate to face 40,000 men?—How were offenders in such a multitude to be amenable to the civil power?—What a shameful perversion of a plain peaceable purpose! To be sure, if the multitude had been assembled to resist the magistrate, offenders could not be secured.—But *they themselves* were ordered to apprehend all offenders amongst them, and to deliver them up to justice.—*They themselves* were to surrender their fellows to civil authority if they offended.

But it seems that lord George ought to have *foreseen* that so great a multitude could not be collected without mischief. Gentlemen, we are not trying whether he might or ought to have *foreseen* mischief, but whether he wickedly and traitorously *PRECONCERTED AND DESIGNED IT*. But if *he* be an object of censure for not foreseeing it, what shall we say to *GOVERNMENT*, that took no step to prevent it,—that issued no proclamation, warning the people of the danger and illegality of such an assembly?—If a peaceable multitude, with a petition in their hands, be an army,—and if the noise and confusion inseparable from numbers, though without violence or the purpose of violence, constitute war,—what shall be said of that *GOVERNMENT*, which remained from Tuesday to Friday, knowing that an army was collecting to levy war by public advertisement, yet had not a single soldier,—no, nor even a constable to protect the state?

Gentlemen, I come forth to do that for government, which its own servant, the Attorney General, has not done.—I come forth to rescue it from the eternal infamy, which would fall upon its head, if the language of its own advocate were to be believed. But government has an unanswerable defence. It neither *did* nor *could* possibly enter into the head of any man in authority to prophesy—human wisdom could not divine, that wicked and desperate men, taking advantage of the occasion, which, perhaps, an imprudent zeal for religion had produced, would dishonour the cause of all religions, by the disgraceful acts which followed.

Why then is it to be said, that lord George Gordon is a traitor, who, without proof of any hostile purpose to the government of his country, only did not foresee,—what nobody else foresaw,—what those people, whose business it is to foresee every danger that threatens the state, and to avert it by the interference of magistracy, though they could not but read

the advertisement, neither did, nor could possibly apprehend?

How is it attempted to answer these observations?—Only by asserting, without evidence, or even reasonable argument, that all this was colour and deceit.—Gentlemen, I again say, that it is scandalous and reproachful, and not to be justified by any duty, which can possibly belong to an advocate at the bar of an English court of justice, to declaim, without any proof, or attempt at proof, that all a man's expressions, however peaceable,—however quiet,—however constitutional,—however loyal,—are all fraud and villainy. Look, gentlemen, to the issues of life, which I before called the evidence of heaven—I call them so still—Truly may I call them so—when out of a book compiled by the crown from the petition in the House of Commons, and containing the names of all who signed it, and which was printed in order to prevent any of that number being summoned upon the jury to try this indictment, NOT ONE CRIMINAL, OR EVEN A SUSPECTED NAME IS TO BE FOUND AMONGST THIS DEFAMED HOST OF PETITIONERS.

After this, gentlemen, I think the crown ought in decency to be silent. I see the effect this circumstance has upon you, and I know I am warranted in my assertion of the fact. If I am not, why did not the Attorney General produce the record of some convictions, and compare it with the list?—I thank them, therefore, for the precious compilation, which, though they did not produce, they cannot stand up and deny.

Solomon says, "*O that my adversary would write a book!*"—so say I. My adversary has written a book, and out of it I am entitled to pronounce, that it cannot again be decently asserted, that lord George Gordon, in exhorting an innocent and unimpeached multitude to be peaceable and quiet, was exciting them to violence against the state.

What is the evidence, then, on which this connexion with the mob is to be proved?—*Only that they had blue cockades.*—Are you or am I answerable for every man who wears a blue cockade?—If a man commits murder in my livery, or in yours, without command, counsel, or consent, is the murder ours?—In all cumulative, constructive treasons you are to judge from the tenor of a man's behaviour, not from crooked and disjointed PARTS of it. *Nemo repente fuit turpissimus.*—No man can possibly be guilty of this crime by a sudden impulse of the mind, as he may of some others; and certainly lord George Gordon stands upon the evidence at Coachmakers'-hall as pure and white as snow. He stands so upon the evidence of a man, who had differed with him as to the expediency of his conduct, yet who swears that, from the time he took the chair till the period which is the subject of inquiry, there was no blame in him.

You, therefore, are bound as Christian men

to believe, that, when he came to St. George's-fields that morning, he did not come there with the hostile purpose of repealing a law by rebellion.

But still it seems all his behaviour at Coachmakers'-hall was colour and deceit. Let us see, therefore, whether this body of men, when assembled, answered the description of that, which I have stated to be the purpose of him who assembled them. Were they a multitude arrayed for terror or force?—On the contrary, you have heard, upon the evidence of men whose veracity is not to be impeached, that they were sober, decent, quiet, peaceable tradesmen;—that they were all of the better sort;—all well dressed, and well behaved;—and that there was not a man among them, who had any one weapon offensive or defensive. Sir Philip Jennings Clerke tells you, he went into the fields; that he drove through them, talked to many individuals among them, who all told him that it was not their wish to persecute the Papists, but that they were alarmed at the progress of their religion from their schools. Sir Philip further told you, that he never saw a more peaceable multitude in his life; and it appears upon the oaths of all who were present, that lord George Gordon went round among them, desiring peace and quietness.

Mark his conduct when he heard from Mr. Evans, that a low, riotous set of people were assembled in Palace-yard. Mr. Evans being a member of the Protestant Association, and being desirous that nothing bad might happen from the assembly, went in his carriage with Mr. Spinage to St. George's-fields, to inform lord George that there were such people assembled (probably Papists) who were determined to do mischief. The moment he told him of what he heard, whatever his original plan might have been, he instantly changed it on seeing the impropriety of it. Do you intend, said Mr. Evans, to carry up all these men with the petition to the House of Commons?—O no! no! not by any means—I do not mean to carry them all up.—Will you give me leave, said Mr. Evans, to go round to the different divisions, and tell the people it is not your lordship's purpose? He answered—By all means; and Mr. Evans accordingly went, but it was impossible to guide such a number of people, peaceable as they were.—They were all desirous to go forward, and lord George was at last obliged to leave the fields exhausted with heat and fatigue, beseeching them to be peaceable and quiet. Mr. Whittingham set him down at the House of Commons; and at the very time that he thus left them in perfect harmony and good order, it appears by the evidence of sir Philip Jennings Clerke, that Palace-yard was in an uproar, filled with mischievous boys and the lowest dregs of the people.

Gentlemen, I have all along told you, that the crown was aware that it had no case of treason, without connecting the noble pri-

soner with consequences, which it was in some luck to find advocates to state, without proof to support it. I can only speak for myself; that small as my chance is (*as times go*) of ever arriving at high office, I would not accept of it on the terms of being obliged to produce against a fellow-citizen, that which I have been witness to this day: for Mr. Attorney General perfectly well knew the innocent and laudable motive, with which the protection was given, that he exhibited as an evidence of guilt: yet it was produced to insinuate, that lord George Gordon, knowing himself to be the ruler of those villains, set himself up as a saviour from their fury. We called lord Stormont to explain this matter to you, who told you that lord George Gordon came to Buckingham-house, and begged to see the King, saying, he might be of great use in quelling the riots; and can there be on earth a greater proof of conscious innocence? for if he had been the wicked mover of them, would he have gone to the King to have confessed it, by offering to recall his followers, from the mischiefs he had provoked?—No! But since, notwithstanding a public protest issued by himself and the Association, reviling the authors of mischief, the Protestant cause was still made the pretext, he thought his public exertions might be useful, as they might tend to remove the prejudices which wicked men had diffused.—The King thought so likewise, and therefore (as appears by lord Stormont) refused to see lord George till he had given the test of his loyalty by such exertions.—But sure I am, our gracious sovereign meant no trap for innocence, nor ever recommended it as such to his servants.

Lord George's language was simply this: 'The multitude pretend to be perpetrating these acts, under the authority of the Protestant petition; I assure your Majesty they are not the Protestant Association, and I shall be glad to be of any service in suppressing them.' I say, by God,* that man is a ruffian, who shall, after this, presume to build upon

* "A singular passage, to be found in this speech, affords a great contrast to the calm and even mild tone of its peroration. It is, indeed, as far as we know, the only instance of the kind in the history of modern eloquence; and we might justly have doubted, if even Mr. Erskine's skill, and well-known discretion as a public speaker, had not forsaken him, and allowed his heat and fancy to hurry him somewhat too far,—had we not, in the traditional account of the perfect success which attended this passage, the most unequivocal evidence in his favour."

"The sensation produced by these words, and by the magic of the voice, the eye, the face, the figure, and all we call the manner, with which they were uttered, is related, by those present on this great occasion, to have been quite electrical, and to baffle all power of description. The feeling of the moment alone,—that sort of sympathy which subsists between an observant speaker and his audience,—which communicates to him, as he goes on, their feelings under what he is saying,—deciphers the language of their looks,—and even teaches him, with-

such honest, artless conduct as an evidence of guilt. Gentlemen, if lord George Gordon had been guilty of high treason (as is assumed to-day) *in the face of the whole parliament*, how are all its members to defend themselves from the misprision of suffering such a person to go at large and to approach his sovereign?—The man who conceals the perpetration of treason, is himself a traitor; but they are all perfectly safe, for nobody thought of treason till fears arising from another quarter bewildered their senses. The King, therefore, and his servants, very wisely accepted his promise of assistance, and he flew with honest zeal to fulfil it. Sir Philip Jennings Clerke tells you, that he made use of every expression, which it was possible for a man in such circumstances to employ. He begged them, for God's sake, to disperse and go home; declared his hope, that the petition would be granted, but that rioting was not the way to effect it.—Sir Philip said he felt himself bound, without being particularly asked, to say every thing he could in protection of an injured and innocent man, and repeated again, that there was not an art, which the prisoner could possibly make use of, that he did not zealously employ;—but that it was all in vain. I began, says he, to tremble for myself, when lord George read the resolution of the House, which was hostile to them, and said their petition would not be taken into consideration till they were quiet. But did he say, *Therefore go on to burn and destroy?*—On the contrary, he helped to pen that motion, and read it to the multitude, *as one which he himself had approved*. After this he went into the coach with sheriff Pugh, in the city; and *there* it was, in the presence of the very magistrate, whom he was assisting to keep the peace, that he *publicly* signed the protection which has been read in evidence against him; although Mr. Fisher, who now stands in my presence, confessed in the privy council, that he himself had granted similar protections to various people—*yet he was dismissed, as having done nothing but his duty*.

This is the plain and simple truth—and for this just obedience to his Majesty's request, do the King's servants come to-day into his court, where he is supposed in person to sit, to turn that obedience into the crime of high treason, and to ask you to put him to death for it.

Gentlemen, you have now heard, upon the solemn oaths of honest disinterested men, a faithful history of the conduct of lord George Gordon, from the day that he became a member of the Protestant Association, to the day

out regarding what he sees, to adapt his words to the state of their minds, by merely attending to his own. This intuitive and momentary impulse could alone have prompted a flight, which it alone could sustain; and, as its failure would indeed have been fatal, so its eminent success must be allowed to rank it among the most famous feats of oratory."

Edinburgh Review, April, 1810.

that he was committed a prisoner to the Tower.—And I have no doubt, from the attention with which I have been honoured from the beginning, that you have still kept in your minds the principles, to which I entreated you would apply it, and that you have measured it by that standard.

You have, therefore, only to look back to the whole of it together;—to reflect on all you have heard concerning him;—to trace him in your recollection through every part of the transaction;—and, considering it with one manly liberal view, to ask your own honest hearts, whether you can say, that this noble and unfortunate youth is a wicked and deliberate traitor, who deserves by your verdict to suffer a shameful and ignominious death, which will stain the ancient honours of his house for ever.

The crime which the crown would have fixed upon him is, that he assembled the Protestant Association round the House of Commons, not merely to influence and persuade parliament by the earnestness of their supplications, but actually to coerce it by hostile rebellious force.—That finding himself disappointed in the success of that coercion, he afterwards incited his followers to abolish the legal indulgences to Papists, which the object of the petition was to repeal, by the burning of their houses of worship, and the destruction of their property, which ended at last in a general attack on the property of all orders of men, religious and civil,—on the public treasures of the nation,—and on the very being of the government.

To support a charge of so atrocious and unnatural a complexion, the laws of the most arbitrary nations would require the most incontrovertible proof. Either the villain must have been taken in the overt act of wickedness, or, if he worked in secret upon others, his guilt must have been brought out by the discovery of a conspiracy, or by the consistent tenour of criminality; the very worst inquisitor that ever dealt in blood would vindicate the torture by plausibility at least, and by the semblance of truth.

What evidence then will a jury of Englishmen expect, from the servants of the crown of England, before they deliver up a brother accused before them to ignominy and death?—What proof will their consciences require?—What will their plain and manly understandings accept of?—What does the immemorial custom of their fathers, and the written law of this land, warrant them in demanding?—Nothing less, in any case of blood, than the clearest and most unequivocal conviction of guilt.—But in this case the act has not even trusted to the humanity and justice of our general law, but has said in plain, rough, expressive terms—*proveably*—that is, says lord Coke, *not upon conjectural circumstances or inferences, or strains of wit, but upon DIRECT AND PLAIN PROOF*—‘For the King, ‘Lords, and Commons,’ continues that great

lawyer, ‘did not use the word *probably*, for ‘then a common argument might have ‘served; but *proveably*, which signifies the ‘highest force of demonstration.’—And what evidence, gentlemen of the jury, does the crown offer to you in compliance with these sound and sacred doctrines of justice?—a few broken, interrupted, disjointed words, without context or connection,—uttered by the speaker in agitation and heat,—heard by those who relate them to you, in the midst of tumult and confusion,—and even those words, mutilated as they are, in direct opposition to, and inconsistent with repeated and earnest declarations, delivered at the very same time, and on the very same occasion, related to you by a much greater number of persons, and absolutely incompatible with the whole tenor of his conduct.—Which of us all, gentlemen, would be safe, standing at the bar of God, or man, if we were not to be judged by the regular current of our lives and conversations, but by detached and unguarded expressions, picked out by malice, and recorded, without context or circumstances, against us? Yet such is the only evidence, on which the crown asks you to dip your hands, and to stain your consciences, in the innocent blood of the noble and unfortunate youth who now stands before you:—on the single evidence of the words you have heard from their witnesses, (*for of what but words have you heard?*) which even if they had stood uncontroverted by the proofs that have swallowed them up, or unexplained by circumstances which destroy their malignity, could not, at the very worst, amount in law to more than a breach of the act against tumultuous petitioning (if such an act still exists); since the worst malice of his enemies has not been able to bring up one single witness to say, that he ever directed, countenanced, or approved rebellious force against the legislature of his country. It is therefore a matter of astonishment to me, that men can keep the natural colour in their cheeks, when they ask for human life, even on the crown’s original case, *though the prisoner had made no defence*.—But will they still continue to ask for it after what they have heard? I will just remind the Solicitor General, before he begins his reply, what matter he has to encounter. He has to encounter this:—That the going up in a body was not even originated by lord George, but by others in his absence.—That when proposed by him officially as chairman, it was adopted by the whole Association, and consequently was *their* act as much as his.—That it was adopted not in a conclave, but with open doors, and the resolution published to all the world.—That it was known of course to the ministers and magistrates of the country, who did not even signify to him, or to any body else, its illegality or danger.—That decency and peace were enjoined and commanded.—That the regularity of the procession, and those badges of distinction, which are now

cruelly turned into the charge of an hostile array against him, were expressly and publicly directed *for the preservation of peace, and the prevention of tumult*.—That while the House was deliberating, he repeatedly entreated them to behave with decency and peace, and to retire to their houses; *though he knew not that he was speaking to the enemies of his cause*.—That when they at last dispersed, no man thought or imagined that treason had been committed.—That he retired to bed, where he lay unconscious that ruffians were ruining him, by their disorders in the night.—That on Monday he published an advertisement, reviling the authors of the riots, and, as the Protestant cause had been wickedly made the pretext for them, solemnly enjoined all who wished well to it to be obedient to the laws. (*Nor has the crown even attempted to prove, that he had either given, or that he afterwards gave, secret instructions in opposition to that public admonition.*)—That he afterwards begged an audience to receive the king's commands;—that he waited on the ministers;—that he attended his duty in parliament;—and when the multitude,—amongst whom there was not a man of the associated Protestants,—again assembled on the Tuesday, under pretence of the Protestant cause, he offered his services, and read a resolution of the House to them, accompanied with every expostulation, which a zeal for peace could possibly inspire.—That he afterwards, in pursuance of the king's direction, attended the magistrates in their duty; honestly and honourably exerting all his powers to quell the fury of the multitude:—a conduct which, to the dishonour of the crown, has been scandalously turned against him, by criminating him with protections granted publicly in the coach of the sheriff of London, whom he was assisting in his office of magistracy; although protections of a similar nature were, to the knowledge of the whole privy council, granted by Mr. Fisher himself, who now stands in my presence unaccused and unproved, but who, if the crown that summoned him *durst have called him*, would have dispersed to their confusion the slightest imputation of guilt.

What then has produced this trial for high treason, or given it, when produced, the seriousness and solemnity it wears?—What, but the inversion of all justice, by judging from *consequences*, instead of from *causes and designs*?—what but the artful manner, in which the crown has endeavoured to blend the petitioning in a body, and the zeal with which an animated disposition conducted it, with the melancholy crimes that followed?—crimes, which the shameful indolence of our magistrates,—which the total extinction of all police and government, suffered to be committed in broad day, and in the delirium of drunkenness, by an unarmed banditti, without a head,—without plan or object,—and without a refuge from the instant gripe of justice:—a banditti, with whom the associated Protes-

tants, and their president, had no manner of connection, and whose cause they overturned, dishonoured, and ruined.

How unchristian then is it to attempt, without evidence, to infect the imaginations of men who are sworn dispassionately and disinterestedly to try the trivial offence, of assembling a multitude with a petition to repeal a law (which has happened so often in all our memories), by blending it with the fatal catastrophe, on which every man's mind may be supposed to retain some degree of irritation?—*O fie! O fie!* Is the intellectual seat of justice to be thus impiously shaken?—Are your benevolent propensities to be thus disappointed and abused?—Do they wish you, while you are listening to the evidence, to connect it with unforeseen consequences, in spite of reason and truth?—Is it their object to hang the millstone of prejudice around his innocent neck to sink him?—If there be such men, may Heaven forgive them for the attempt, and inspire you with fortitude and wisdom, to discharge your duty with calm, steady, and reflecting minds.

Gentlemen, I have no manner of doubt that you will.—I am sure you cannot but see, notwithstanding my great inability, increased by a perturbation of mind (arising, thank God! from no dishonest cause), that there has been not only no evidence on the part of the crown, to fix the guilt of the late commotions upon the prisoner, but that, on the contrary, we have been able to resist the *probability*, I might almost say the *possibility*—of the charge, not only by living witnesses, whom we only ceased to call, because the trial would never have ended, but by the evidence of all the blood that has paid the forfeit of that guilt already; an evidence that I will take upon me to say is the strongest, and most unanswerable, which the combination of natural events ever brought together since the beginning of the world for the deliverance of the oppressed. Since in the late numerous trials for acts of violence and depredation, though conducted by the ablest servants of the crown, with a laudable eye to the investigation of the subject which now engages us, no one fact appeared, which showed any plan,—any object,—any leader.—Since out of 44,000 persons, who signed the Petition of the Protestants, not one was to be found among those who were convicted, tried, or even apprehended on suspicion;—and since out of all the felons, who were let loose from prisons, and who assisted in the destruction of our property, not a single wretch was to be found, who could even attempt to save his own life by the plausible promise of giving evidence to-day.

What can overturn such a proof as this?—Surely a good man might, without superstition, believe, that such an union of events was something more than natural, and that the Divine Providence was watchful for the protection of innocence and truth.

I may now therefore relieve you from the pain of hearing me any longer, and be myself relieved from speaking on a subject which agitates and distresses me. Since lord George Gordon stands clear of every hostile act or purpose against the legislature of his country, or the properties of his fellow subjects—since the whole tenor of his conduct repels the belief of the *traitorous intention* charged by the indictment—my task is finished. I shall make no address to your passions—I will not remind you of the long and rigorous imprisonment he has suffered;—I will not speak to you of his great youth, of his illustrious birth, and of his uniformly animated and generous zeal in parliament for the constitution of his country. Such topics might be useful in the balance of a doubtful case; yet even then I should have trusted to the honest hearts of Englishmen to have felt them without excitation. At present, the plain and rigid rules of justice and truth are sufficient to entitle me to your verdict; and may God Almighty, who is the sacred Author of both, fill your minds with the deepest impressions of them, and with virtue to follow those impressions! You will then restore my innocent client to liberty, and me to that peace of mind, which, since the protection of that innocence in any part depended upon me, I have never known.

Mr. Solicitor General, [James Mansfield, afterwards Ch. Just. C. B.]

Gentlemen of the Jury; It is my duty now, and a very painful one indeed it is, exclusive of the circumstance of the very long time we have been here employed, and of the fatigue which I very sensibly feel, that I should now be obliged to observe to you upon the effect of the evidence which has been given against the prisoner.

I am perfectly convinced, that, if I was not so much exhausted as to be equal only to very feeble efforts indeed, it would be utterly out of my power to do justice to the present cause; many, I am satisfied, of those who hear me, and who have paid attention to the evidence, would perceive that I was guilty of many omissions, that I suffered a great variety of circumstances to pass unnoticed, material to be attended to in the decision of the cause. I am also apprehensive, but I cannot say with much concern, that to others I may appear, even with those defects, too strenuous perhaps in drawing inferences from the facts which have been proved in the cause to the prejudice of the prisoner; that I may urge arguments beyond their natural force, and wish you to lay stress upon proofs which ought not to carry much force with them: and, indeed, if I was to believe, or if any man could believe, what has been very lately, very frequently, very boldly, very hardily asserted, I might be afraid of sharing in that censure and that blame, which, in a manner perfectly new in English courts of judicature, has been cast upon my learned friend, as the author of this prosecu-

tion, as well as upon the witnesses who have appeared in the cause, and upon all who have had any thing to do with it; and, if the word of a gentleman who has boldly, adventurously and licentiously inveighed against every man who has had any thing to do in the conduct of this cause, is to be taken against evidence, against reason, against law, I should have indeed a very terrible trial to undergo. I must fear very much for my reputation; I must fear the imputation of persecution, of cruelty, of an attempt to support an unjust and groundless prosecution, by shameful ignominious evidence; for this is the result of frequent assertions, made with a boldness perfectly new to me in my short experience in English judicature, but which, however, makes no impression upon me.

I have endeavoured to guard myself against it, for this just and important reason: if I suffered myself to be transported by any thing like resentment of the wrong I think I have to complain of on the part of the advocate employed, I might, perhaps, incur the censure of severity and acrimony against the prisoner. God knows I am a perfect stranger to any such thing; I never knew them, I hope I never shall know them; but greater provocation by the counsel for a prisoner was never given to the advocates for a prosecution, I might almost say, to the justice of the country, and thus much I cannot help observing: but I am so far from feeling that the invective, the censure, and give me leave to call it the calumny and the slander, that have been so freely spread, and so often repeated, have the smallest ground, that I am free to confess I should have thought, if I had stood in the place of my learned friend, when he commenced this prosecution, I should have thought myself extremely blamable, and answerable to the justice of my country for great neglect, if I had omitted to bring the prisoner to trial. I do not mean to insinuate, that he is therefore guilty because he is tried; but I think all who hear me will go along with me, when I say, that if in the ultimate result it could happen, that your verdict should be in his favour, that he has had such strong appearances of guilt against him—— I say, gentlemen, every man I think will accompany me when I assert, that there have appeared such strong symptoms at least, of guilt against the prisoner; that any person acquainted with them, would have thought it the duty of those entrusted with the prosecuting powers of the crown, to bring the prisoner to this tribunal. Let me again assert, however, that whatever has been said acrimonious towards my friend or me, (as I am included in the accusation) I forget it from this moment; it shall make no impression upon me; it shall not sharpen my temper against the noble prisoner: it shall not, on the other hand, deter me from doing that which I think my duty; and though a learned gentleman at the bar shall tell me

ten times, to my face, that I am a ruffian, I shall not think that I deserve it because he says so; nor will any such abuse frighten me from doing the duty of an English advocate, prosecuting, at least, I will venture to say, whether he be guilty of the crime charged upon him, or not, a criminal, in the unfortunate effects of his conduct, as pernicious to the country, as any from whom it ever felt.

Gentlemen, I hardly know, amidst the various matter with which this cause is pregnant, and which calls for observation, where first to call your attention.

Before I go into the particulars of the facts upon which I have to observe, something having been said upon some general topics, it is fit that I should remark to you upon it. Into this cause have been introduced some doctrines upon the freedom of petitions to parliament, and that multitudes for that purpose may accompany them; and it seems to have been said by both my learned friends, that any number of men may go with their petitions to parliament; and they both tell you, that an act of parliament which restrains that number to ten, made in the time of Charles the first, has been repealed by a law made in the 1st year of king William, called the Bill of Rights. In my apprehension, there is no foundation for that supposition, though, if there was, it has no relation to the cause you are trying. A statute in the reign of Charles the second, made after the mischiefs of the usurpation, in order to check every approach towards tumults, restrained the number of men who under any pretence shall prefer petitions, to ten, under considerable pecuniary penalties. Immediately after the Revolution in 1688, in the Bill of Rights, one declared is, that the subjects have a right to petition the king, not to petition the parliament; for of the right to petition the parliament no man had ever doubted: but that very act recites, as one of the acts of tyranny practised by James the second, that several prelates had been prosecuted for a petition; and, as applied to that grievance, there afterwards comes a declaration of the rights of the people, that they may petition the king. All petitions, therefore, to parliament, about the right of presenting which no mortal could ever doubt, remain as they were before that Declaration of Rights, and cannot possibly be affected by it.

But farther, if it had been said expressly by the Declaration of Rights, that the subject had a right to petition the king or parliament, would it have at all followed, that the act of Charles the second, which supposes such a right, and only regulates the exercise of it, was in any respect repealed?

The statute of Charles the second, which says there never shall be more than ten persons go up with a petition, either to the king or parliament, necessarily supposes, that, previous to that act, there was no limitation of

number; that the subjects had a right to offer up their petitions to either the parliament or the king, but, to prevent abuses of that right, limits the number of persons that shall accompany a petition. It seems to me absurd reasoning to suppose that this act of parliament could possibly be repealed by a subsequent law, which only declares in general, that the people of this kingdom have a right to petition the king. But, in God's name, what has that act of parliament to do with the present question? Was it a law before the time of Charles the second, when the numbers of petitioners were restrained to ten, that any number might carry a petition? that that number might carry their petition with any circumstances? in short, that they might take the prince on the throne prisoner in his palace, or surround the parliament, and besiege it, till their petitions were granted? Can this possibly be believed? It cannot be; it is utterly inconsistent with all order and government; and men might be as guilty of a riot, tumultuously petitioning before that act, as they can be since, and are answerable to their country for the commission of such a crime; neither can it possibly be inferred from that act, (because it has laid a penalty upon petitioners, let them be ever so peaceable, who go up in a number beyond ten) that if they are guilty of the greatest outrages, they are still only punishable according to that act, and are not to be called upon by the justice of their country, for the most violent riots, for terror, actual force, or any of the circumstances of outrage you may suppose men guilty of, in order to enforce a petition, carried up by a multitude of people.

A great deal has been said to you upon the subject of the law of treason; and my learned friend is complained of, that he did not employ a great length of time in explaining to you the doctrine of treason, upon which this prosecution is founded. He is not at liberty to state his reason for himself, and therefore he will pardon me that I give one for him; and that is, that he is not accustomed, idly, uselessly, and vainly, to mis-spend his time, either to make a parade of his learning, or to shew that he has been guilty of a foolish diligence, in collecting from books, positions of the law of treason, of which no mortal man can entertain a doubt; for you will observe, that even now, in the stage of this cause in which we are, neither of the learned gentlemen you have heard, neither my learned friend who opened the defence, nor the learned gentleman whom you have last heard, have made a doubt, that that which was described by the Attorney General shortly, is an act of levying war; that is to say, an insurrection of a multitude, either to redress a pretended public grievance, to repeal a law, to change religion, in short, to effect any purpose contrary to law, in which the subjects of the kingdom at large are interested, by force, and which consequently must naturally pro-

duce force in opposition to it, and thus beget a state of war.

I do not mean to make use of technical language to you, because, if I am so happy as to explain to you what I mean, you will understand me better than if I was to resort to law books, and make use of technical expressions. Will any man deny that this act is treason? or is it a new doctrine? No person who has been one year at the inns of court, and has looked into one book relating to criminal law, is a stranger to it. The 25th of Edward the third did not make this the law of England; it was the law of England from the earliest time, long before any written laws were known; what we call the common law of the land; and it must be the law of every country; for without it no country can exist, no government can be upheld. If a lawless multitude may rise with force, take the executive power into their own hands, and redress grievances; if they may assume the legislative power, and say, 'We are the governors of this country; you who have the power of making laws shall have it no longer; but this law shall be made, or that shall be undone,' no government can exist; and wherever there is an insurrection of a multitude, by force to repeal a law, no man ever yet hesitated to pronounce, that that was high treason, because it is levying war: you will see it cannot be otherwise. If a multitude of people thus endeavour to enforce their lawless pretensions, in opposition to the established government, what must take place? Law is at an end till they are quelled. If they are yielded to, they are the legislators, the sovereigns of the country; the government exists no longer. If they are opposed, a state of war takes place; a state of force, in which he that is the stronger must prevail. Courts of justice must be at an end, such litigations cannot there be determined; no tribunal can decide the dispute, it must be terminated by the sword.

All this is obvious to the meanest capacity, that reflects upon it a moment; and this is the plain, and simple, and intelligible doctrine, upon which the cases, which I shall not trouble you on, of Dammaree that was mentioned, and many others, have been determined; upon which I shall only say, that supposing the guilt of the noble lord is made to appear, supposing he is affected by what has been done, the crimes of those who have again and again suffered, in the case of Dammaree and many others, are nothing in the balance. The case of Dammaree was an enraged rabble got together, to destroy some meeting-houses; and two men were there convicted of levying war, one of whom only called out to the mob "to follow him to one fire," and was present at another, and took some goods and flung them in the fire, encouraging them, and crying, "Down with the Presbyterians!" and two meeting-houses were destroyed, and no more; a mere trifle, a

nothing to what we have here had experience of.

It is not that case alone, but there are cases without end: indeed, if there had been none no man could doubt, but that those who engage in such a transaction, levy war against the state; because they set up themselves against the government, with force attack it, and can by force only be resisted, and therefore introduce a state of war; for I know no true description of a state of war in a country, except that in which, between subjects engaged on different sides, force only can decide the question. Those who engage here to repeal a law, supposing that to be proved, what do they say? They tell the king, who has the executive power, whose first and most important duty it is to convene together and protect his parliaments in free deliberation, that he shall not exercise that power; that he, as part of the parliament, sitting in the judgment of law always in it, shall not exercise that part of legislative power. To the parliament itself they say, "Though the constitution of your country has made you the legislators, we will take that power out of your hands; you shall be legislators no longer; it is not you that shall enact, it is not you that shall repeal; we will do it, we, who are"—what? who are, and must be, and can be, nothing else than traitors to their country, and rebels against the state.

I hope I do not, I am sure I do not mean, to strain the doctrine of treason one inch, or a smaller space, beyond that which the predecessors of the learned judges have long ago, upon the soundest principles, decided; and as little would I attempt to aggravate the guilt of the prisoner at the bar, or to strain the evidence which has been produced against him.

The question which you will have to decide upon the noble lord, will be, as it seems to me, whether he has been guilty of levying war in this way? that is, whether he has been a partaker, a promoter, and inciter of an insurrection, made against the government of this country, to repeal by force the law that you have heard of? That will be the question. If there has been an insurrection to repeal that law, if the prisoner at the bar is in judgment of law one of the insurgents, he has then committed treason against the state; he has been guilty of levying war; and the learned judges will tell you, it is not necessary that he should do the mischief that is done, with his own hand. The general of an army seldom puts to death one of the enemy with his own hand; he fires not the musquet, seldom points the sword; the actual, immediate mischief is done by the hands of the soldiers whom he directs and commands; and if there has been such an insurrection as I suppose there has existed, and the noble lord has borne a part in it, has incited it, partly by his expressions, and partly by his actions; then, whether he was present at all or any of those places where the worst of the mischief was

committed, the guilt of all falls as much upon his head, as if he himself had put the fire-brand to every house that was destroyed.

This will not be disputed with me, it is not doubted by either of the learned gentlemen; and I am extremely happy, that if I misinterpret any part of this law, or state any thing too strong to you, I shall be corrected by the learned judges who hear me. I hope that not any thing I have stated to you will deserve the name of conundrums, which is one of the appellations given, in the haste of eloquence, I presume, by one of the gentlemen who last addressed you. I take it to be clear law as any to be found in our books, and never to this moment disputed.

In the first place, we are to consider here, whether there has been an insurrection to repeal this law? Then we will enquire, whether the noble prisoner had a part in it? Now, that there has been an insurrection to repeal this law, I think I need not take up much of your time to prove; for mark what has been done. I know the exceptions that are attempted by the learned gentlemen, which I shall by and by answer; but see shortly what has been done—A vast multitude of people, greater than can possibly be consistent with order, to the number of thousands without a name, (for whether 20, 30, 40,000, remains perfectly in the dark) met together at Coach-maker's-hall, and other places, and finally in St. George's-fields, for the purpose of carrying a petition to parliament: they come thither with that force upon Friday the 2nd of June; they fill every avenue of the House, they block up the lobby, they insult some of the members of the legislature, they made it barely possible for many others to find their way to their seats in that House; their noise, their riot, their tumult, is such, that the business of the legislature cannot go on; the representatives of you and of us all sit still with their hands before them, the prisoners, the slaves of these humble petitioners; for slaves we certainly were, as it is proved, in every sense of the word; scarce venturing to look out at the door, expecting every moment violence within, and not knowing that death would not be the fate of those who should dare to say a word in opposition to the requests of these petitioners. The conduct of many of the members of the House is reported to this disorderly tumultuous assembly; they are told who are their friends, and who are their enemies. I am not saying now by whom they are told, by somebody they are told, that the business cannot go on, that the House cannot even divide upon their petition till they retire. What is their conduct? Do they move? How happened it that the members of that House were not prisoners for days? Was it any merit in the petitioners that they did not so remain? that they set them at liberty? Did they put an end to their imprisonment? No; they were set at liberty by that, which I hope we shall never live to see

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again in this country, they were set at liberty by a military force. The legislature of this country, the parliament, the commons of England there represented, could not protect themselves, could not debate, could not deliberate, could not decide: the king, whose peculiar duty it was to protect them, could not, by the ordinary exercise of his power, the civil power I mean, that which alone we know in the ordinary course of the administration of public affairs; he was obliged to have recourse to his army. And in what state was this country then? Permit me to stop here, and call your attention for a moment. Good God! is that a state of peace, when the senators of a great nation cannot by themselves, by the magistrates of the country, defend themselves from actual violence? And I will venture to say, there was not a man in this town, there was not a person who had any connection with a friend then in that House, who did not tremble for his fate.

The mischiefs of such a state, besides the dreadful insult to the House itself, I need not paint to you, for they are obvious. You have the same connections with other men; you have brothers, you have fathers, you have sons, and you can very easily conceive what must have been felt, by all who had any thing to wish, or hope, for those who were in this lamentable state of imprisonment, unknown before, I believe, in any civilized country. Those who call this a state of peace, who say that my learned friend's accusing criminals that are the authors of this dreadful disorder with levying war against the king, is a dreadful reproach upon the persons entrusted by his majesty with prosecuting for the sake of public justice, differ very widely from me. I wish never to stretch reasons; but if I had been called upon at that moment to say, whether this country was in a state of peace or war, whether there then had begun a rebellion, I should have taken a great deal of time to consider it; I should not have thought it the work of a moment to decide, that this country was then in a state of peace; for I cannot help myself thinking, that, at that time, the real power of the country was in that turbulent unruly multitude, by which the House of Commons was then beset—beset for the purpose of enforcing a repeal of that law. The words, "No Popery! Repeal, repeal!" echoed again and again in that House; one of the door-keepers who attended, telling you, that he was so frightened, that he does not know how, at last, the lobby was cleared; and such a state of force and outrage prevailed, as, I believe, you nor any other person present have ever heard of.

This was unquestionably the case. What followed? The object was, to repeal a law which had been made,—falsely as it has been said, wickedly as it has, in my opinion, been said,—tolerating or encouraging popery; for the object of that repealing law was only to

obliterate from the statutes of this country certain clauses in a law that had been written in blood—cruel almost beyond example. I do not know that there is another instance, though I believe there is one in the statutes, in which perpetual imprisonment is inflicted upon a subject of this country; and it is not for the honour of the laws of a free country that any man should be condemned to languish out his life in a miserable dungeon; to put him to death, is mercy in comparison of such a punishment. To repeal this cruel law, which was certainly the effect of faction, for it was made in the reign of a man dear to the present times, and dear for ever he ought to be to the human race, for the most uninterrupted love of liberty civil and religious, for his noble, his most glorious and successful exertions for the support of both. The law made in king William's reign, which it was the object of this act to repeal, was certainly made much against the inclination of that illustrious prince, and because the miserable faction which then distracted this country made it impossible for him to resist it. To repeal this repealing law was the object of this tumultuous assembly; these petitioners insisted upon that repeal.

When this law was not repealed, when the House had firmness enough not to be overawed by those who wanted to be their masters, what happened next? Did they stop? Did they disperse, or did they set about enforcing this repeal by arguments of another sort? By arguments exactly similar to those which prevailed in the case of Dammaree, and of the men who were convicted for pulling down meeting-houses. They resorted first to the chapels of foreign ambassadors, because there the Roman Catholic religion was exercised; and these they demolished and plundered. When I say plundered, it was mere plunder for destruction. This was upon Friday. What was next done?

Upon Sunday, one chapel and some houses of Roman Catholics are plundered; some of the offenders are taken up; persons appear as witnesses against them. What follows? Those who appeared as witnesses, and those who were active in taking them up, have their houses pulled down.

Upon the Monday night, an attack is made on sir George Savile, a name too respectable to receive any advantage from panegyrics of mine; his house is attacked, not demolished, because saved by a military force; the same military force which dispersed the mob after the mischiefs it had done at the chapels of both ambassadors. This is upon the Monday.

What is done upon the Tuesday? The same violence repeated of every sort. First, a tumultuous assembly here, ready to have acted the same tragedy over again, to have repeated the same insult upon the House; but that ignominious scene necessarily again caused the military force to be called in to protect our legislature; otherwise, it cannot

be doubted but the same noise, the same tumult, every thing that passed before, in the lobby, would have been repeated to the members of the House. A noble lord, coming down to discharge his duty in parliament, narrowly escaping with his life; Mr. Hyde, because he interposed to protect that noble lord, was immediately marked by the mob; there was a cry instantly after, to go to Hyde's, and his house is pulled down. From thence, a cry 'To Newgate!' that gaol is destroyed, because in that gaol those offenders who had been before apprehended were confined.

I need not go through the several outrages: they were dreadful. You have heard it proved, and you must know yourselves, that violence and outrage were felt in many places; dreaded every where, and resisted by none but a military force; the law was at an end; magistrates were nothing; and a very considerable military force was necessary to subdue this insurrection. All this happened; and there can be no doubt, I think, if this happened by the same persons, pursuing the same end, the repeal of the law, that it is a violent insurrection, an actual war against the government, against the legislature of this country, in order to compel by force a repeal of this law. If it is, I shall say no more than I have done already, to convince you that the persons who are guilty of these proceedings are guilty of the crime of high-treason. I assure you I do not, God forbid I should! wilfully stretch the law beyond what I take to be its clear and settled import.

If this has been committed, if this was the deplorable state of England, we come next to consider, whether the noble prisoner has had that share in it which involves him in the guilt. It has been asked, What possible motive could engage the prisoner in enterprises so illegal, so dangerous, so desperate? In answer to that, I cannot look into the human heart; but I know that the worst of all enterprises have been produced, and repeatedly been produced, in the world, by false ambition, aiming at unjust pre-eminence; and likewise by false notions of religion, which, though felt to a certain degree very often, are seldom quite free from hypocrisy. and if the mind of any man is infatuated with religious zeal, and has also room left in it for ambition, there does not exist in human nature a more dreadful composition; because such a man will sometimes even deceive himself; he will constantly attempt to deceive others; and, under the mistake of zeal for religion, he will endeavour to effectuate every purpose, wicked or not, that can serve or promote the ends of his ambition. I need not recal to your mind the history of an age not very distant in this country, in which these qualities, mixed together in some very eminent men, desolated this nation, and made it for many years a scene of confusion, horror, and bloodshed.

Whether these were the motives of the noble lord, I do not pretend to decide. I am to judge from his actions only; and if he has been guilty of that, which it is the object of this prosecution to prove upon him; for we cannot dive into his heart, and truly discern the motives upon which he acted; whatever those motives may be, he must suffer the portion which the law has allotted for his crimes.

Now, gentlemen, let me consider the part which the noble lord has acted, and the evidence by which that is proved. I will state it shortly to you, and then observe upon the evidence by which it is proved.

The noble lord met several times at the different places where the Protestant Association were assembled: he was the president of that assembly. His object was to repeal this law. At Coachmakers'-hall it was decided; and he strongly supported the idea of meeting in St. George's-fields with that immense number. At that Coachmakers'-hall he holds language dreadful almost to repeat to you. I state this to you, supposing the witnesses have spoken the truth; for at that place, or at one of the meetings, when he is exhorting those of whom he was president, he tells them, "that his majesty's counsellors, or his advisers, had brought him into the same situation with James the 2nd, after his abdication." He read the king's coronation-oath: he said, "the king had broken that oath." Speaking of his countrymen the Scotch, he said, "his countrymen did not mince the matter; they spoke out." You will remark, gentlemen, it occurs again and again: there is no proof of any persons in Scotland speaking out, in any other sense than in that you will find by and by, by acts of force. He advised them "steadfastly to adhere to so good a cause." This is Mr. Hay's evidence. He tells you farther, that he saw the person who carried the flag down at the House of Commons, carrying the same flag at the burning of the Fleet-prison. It is a part of this gentleman's evidence, as of several others, that "the noble lord desired that they would have cockades;" and that is indeed proved by his own witness, Mr. Middleton.

Mr. Metcalf tells you, that the noble lord told the people when they were assembled, "that the Scotch had succeeded by their unanimity; desired that they would be unanimous; hoped no one who had signed the Petition, would be ashamed or afraid to shew himself in the cause; that he would not present the Petition, unless he was met in St. George's-fields by 20,000 people; he would be answerable for any that were molested on account of the meeting; he wished well to the cause, and would go to the gallows in or for it," the witness is not certain which; "he would not present the petition of a lukewarm people."

Mr. Anstruther proves to you expressions of the same sort; "that the Scotch had suc-

ceeded by their unanimity; he desired they also would be unanimous; that he would not go up with the Petition, unless he was met by 20,000 people: he recommended it to them to come with some mark of distinction, as a blue ribbon, or blue cockade, that they might be distinguished from their foes; that he would be answerable they should not be molested; he would not have them run any risk he would not himself run; that he wished so well to the cause, he was ready to go to death for the cause, or to go to the gallows for it."

Here are three witnesses; Hay, Metcalf, and Mr. Anstruther.—These are the expressions previous to the meeting in St. George's-fields. In St. George's-fields this assembly met; they had their flags; on some, "The Protestant Association;" on others, "No Popery!" they had all, according to the desire of the noble lord, blue cockades in their hats. They are desired to go into divisions, (that was settled at Coachmakers'-hall) and march in them; in those divisions they came to the House; when they came to the House, the noble lord several times addressed them: he tells them again and again what is said by this man, what is said by another; "the Speaker says, they are come under the pretence of religion; lord North calls them a mob; a member for Bristol is against them; Mr. Rous moves for calling in the military or the civil power." This the noble lord does. They apply to him, having still their cockades, thousands about the House stopping up every avenue. The noble lord addresses them many times; he states the case to them, and tells them, "that the business cannot be done, there can be no division till they depart; that almost all the House, excepting three or four individuals, are for adjourning till Tuesday." They offer to go, if he will advise them so; they will take his advice, and he leaves it entirely to themselves: "he advises them to be temperate and firm; sometimes advises them to adhere, sometimes advises them to be steady." Mr. Anstruther mentioned a variety of things that passed between the noble lord and them, when they were in the lobby, and when he was in the gallery, and at the time when there was great confusion; and among other things, the noble lord undertakes to tell them what is the true state of the case. "I will tell you how the matter stands; the House are going to divide upon the question, whether your Petition shall be taken into consideration now or upon Tuesday; there are for taking it into consideration now, myself and five or six; the rest are against it: if it is not now taken into consideration, the Petition will be lost; to-morrow the House does not sit, Monday is the king's birthday, Tuesday the parliament may be dissolved, or prorogued." This passed in the lobby.

Mr. Bowen gives you a much fuller detail of what passed, and of the several things said

by the noble lord; he says that other people spoke to this mob, desiring they would depart; they called out, 'Lord George Gordon!' He told him what he had heard in the lobby, that these persons would go if he desired them. Lord George Gordon went to the gallery; he addressed them, desired them to be quiet, peaceable, and steady: "His majesty is a gracious monarch, and when he hears that the people ten miles round are collecting, no doubt he will send his ministers private orders to repeal the bill." Then he mentions an attempt to introduce this bill into Scotland; "the Scotch had no redress till they pulled down the mass houses," or, if those were not the words, they were to the same effect; or "when they pulled down the mass houses, they had redress: that then lord Weymouth sent official assurances, that the act should not be extended to them; and why should the Scotch be better off than you?"

Mr. Cater follows this gentleman; and he gives you an account of expressions very much to the same effect. He tells you, that persons were there calling out, that they would clear the lobby, if his lordship wished it; they would do it directly, and without any trouble.

The prisoner said, "I will tell you how your case stands; I have moved to have your Petition taken now into consideration; there are alderman Bull and two or three more for it, the rest are against it; therefore, if you wish the Petition should now be taken into consideration, you may stay, or do as you please. He then asked them, whether they would choose to have it now taken into consideration?" They were all silent and attentive when he addressed them; then they all called out, "Now, now, now!" Then he asked them, "Would you wish to be in the same state they are in in Scotland?" They said, "Yes, yes." The noble lord's answer is, "Well, well."

Gentlemen, all this passed upon the Friday. I have told you the mischief that was done between that time and the Tuesday. The same mob come down again to the House on Tuesday, with their blue cockades, threatening the same danger to the members. A noble lord, in the midst of them, had great violence offered to him, which was stopped only by the military. A party of the mob then go to Mr. Hyde's, and then to Newgate, with their blue cockades. And how does the noble prisoner come to that House?—With his blue cockade—with that same badge, with that same bond of union and sedition, which had marked him out as one of those concerned in this insurrection. In this appearance he comes down to the House upon the Tuesday. How does he depart?—He is carried away in triumph by the same mob—his horses are taken from his carriage, and he is drawn into the city. This is proved to you by his own witness, sir Philip Jennings Clerke, who was

carried very much against his own will, and beyond the place he meant to go, to the house of alderman Bull; for it seems, without any direction given by the noble lord, they knew the house in the city to which he would desire to go.

What does the noble lord do upon the Wednesday? He goes to one of the secretaries of state, and as his counsel tells you, having nothing to do in this transaction, he tells the secretary he wants an admission to his majesty, to inform him that "he can be of great service in suppressing the riots." This the noble lord says himself upon that very Wednesday, and afterwards, when desired by a person, he writes his name upon the protection that has been read to you; that protection has its effect: the rabble, who were about to attack the house of the man who wanted that protection, and in which a Roman Catholic lived, stopped their violence, yielded to the protection, and the house was saved.

This is the substance of what is proved against the noble lord. But, in the first place, you are told by the gentleman whom you last heard,—uniform in his eloquence, for eloquence he undoubtedly has—I dare say he was transported by the unusual heat and warmth with which you saw him agitated; and I dare say, in cooler moments, reflecting upon what he said, he would recall his expressions; but, in order to get rid of this testimony, he tells you, that the evidence corresponds to the designs and the views of those who are in the prosecution, and that it has been supported by the scum of the earth; that was the general characteristic given to the witnesses, the scum of the earth. It was given generally; and as applied to one, it will have little weight, when the same facts are proved by many. But who deserves that appellation? The witnesses produced are, Mr. Hay, a printer, who has had the misfortune to have failed in trade, to have been a bankrupt; and therefore, for the sake of a play upon the word, he, because he has been unfortunate in his circumstances, is to be dishonest; because he has been a bankrupt in trade, is a bankrupt in conscience; and you are to take that gentleman's word, in order to get rid at once of the testimony of Mr. Hay, and to suppose, upon his bold and groundless assertion, that Mr. Hay, without a motive, without interest, without possible reason, is guilty of wilful and corrupt perjury; for nothing less will serve the purpose: and you know, gentlemen, that every witness, unless he disgraces and contradicts himself, is to be thought worthy of credit. You know, upon such a trial as this, it is peculiarly in the power of the prisoner to impeach the character of a witness, if he deserves to be impeached; because by a law made favourable to persons in the situation of the noble lord, he has a list delivered him of the witnesses, 18 days before his trial, in order to give him an opportunity of knowing who they are, where they live, and what is their reputa-

tion, that he may find out a ground, if there is any, to impeach their credit. Not an attempt is made by evidence to impeach the credit of Mr. Hay; therefore I have a right to say, that unless you can discover, in the testimony he has given, such contradictions as will affect his credit, he stands an honest unimpeached Englishman before you, and is entitled (equally with every Englishman whose character and credit is not wounded) to your belief.

What are the other witnesses?—Mr. Anstruther, a gentleman at the bar; a more honourable character this island does not boast. What is Mr. Metcalf?—An attorney of undoubted reputation. Who is Mr. Bowen?—A clergyman, whose reputation was never touched; an officiating chaplain to the House of Commons, who was officiating to the House that day.—Mr. Cater, a late member of the House of Commons, now not sitting in it; a man of large fortune, and irreproachable character, who could have no temptation to depose a fraud.

These are the witnesses who speak to the transactions at the Hall, and at the House of Commons. Are they to be disbelieved? Is slander to do away that evidence, in answer to which nothing can be said, and against which I hope by and by to shew you (where I say I hope, I only mean to do my duty; I have no other hope) no evidence has been given? Now, if their evidence is true, what consequence results? What is the language to men formed into a body, meeting for a public purpose, the object of which is to repeal a law as they suppose affecting the Protestant religion, which his majesty by his coronation oath is bound to support? The language is, "he has violated, or broken, that oath; he is in the same situation that king James the second was, when he had abdicated the throne." If one meant to sound rebellion through the land, in terms the loudest, the strongest, and most effectual, does language furnish one with expressions that would better answer the purpose?

What is said about the Scotch? "That they spoke out, they had not minced the matter."

What is spoken about "sharing the common danger? about going to the gallows?" Strange ideas to enter into the heads of men, whose objects were perfectly peaceable; who looked not to any thing like force,—who were the last of all men that should have dreamed of danger.

What is the language throughout, from beginning to end, in the lobby of the House of Commons? The allusion to the Scotch again and again, in the plainest terms, as proved by Mr. Bowen, Mr. Cater, Mr. Anstruther, and all the rest of this evidence, with regard to the Scotch, is helped, though it don't appear to me to be material, by these witnesses, two of whom speak to the destruction of Roman Catholic chapels in Edinburgh in 1779, which

was not necessary, because the noble lord himself said to the mob, "that when the mass-houses were destroyed, the people of Scotland had redress; that then lord Weymouth sent them an official letter, that the design of introducing the same law there should be dropped."

Mr. Cater says, he asked them, as Mr. Anstruther I think proves too, "whether they would not be in as good a condition as the Scotch? whether they would not choose to be as well off as the Scotch?" Mr. Cater said, the mob said, "Yes, yes."—"Well, well," replied the noble lord.

Need I argue upon the force and result of these expressions? What is it he means by the Scotch speaking out, and not mincing the matter? Why, that they by force had prevented the law being extended to them, by the destruction of the mass-houses. I will not waste your time in endeavouring to enforce this, because I am sure neither you, nor any man who has heard the evidence that has been given, can possibly entertain the least doubt, upon the meaning of the speeches of the noble lord; and if he had himself been asked at the time, what was the meaning of what he said about the Scotch, he would have thought a man must be a driveller, who did not understand him. Indeed the language is express. Then could there possibly be a more direct, immediate, professed incitement to the very mischief which must follow, the destruction of the Roman Catholic chapels here, as the Roman Catholic chapels had been destroyed at Edinburgh? for you will remember, that very thing followed in this town upon the Friday night.

Other expressions there are, over and over again; Be steady! be firm! This I hear mentioned as if it was nothing. The noble lord says, "he will not tell them what to do, the matter will be put an end to if the petition does not come on now, the parliament don't sit to-morrow, Monday is the king's birth day, and Tuesday the parliament may be dissolved or prorogued; if you want it to come on, you may stay, or do as you please."—Stay, or do as you please! what! stay against the will of the members of parliament! stay to obstruct them! stay to imprison them! for they were then in a state of imprisonment. Stay till a military force shall relieve them! "Or, you may do what you please!" What, in God's name, could they do, unless by violent hands put the members to death, or practise an imprisonment of a day! It cannot be imagined any thing less can be meant, than by actual force to compel a consent to the repeal of that law. Then what is the consequence? And was it less than we have heard of? I remember the old designation; *ad cadum unius-cujusque nostrum*. It was marking out for slaughter, for immediate death, almost every man who took a part adverse to the object of these petitioners, as they were called; these petitioners, whom, in the most innocent lan-

guage, the noble lord desires to be firm, to be steady.

I have heard of humble petitioners, I have heard of modest petitioners, I have heard of reasonable petitioners, I have heard of earnest petitioners; but a steady and a firm petitioner is a new creature, one that I hope I shall not live to see encouraged in this country. The petitioner that petitions with firmness, I must understand, petitions with a determination not to be refused; and then he no longer petitions, he commands; his exhortation is an exhortation to men who do not come to ask, but who are resolved to take. No fair exposition of language will warrant any other conclusion; yet these are most innocent in the words of the prisoner.

After all this, what is the conduct of the noble lord? Upon so much mischief being done to chapels, to private houses, before Tuesday, do you hear of his going about to the incendiaries, to those miscreants who were setting this town on fire, in order to intreat them to desist? What is his behaviour upon that Tuesday? In my opinion, the most important instance in the whole of his conduct, hardly excepting that which passed between him and lord Stormont: he comes down to the House, attended by the same mob, with blue cockades, and colours flying; and what ensign does he bring with him? That same cockade. For what purpose? had he then done? had he desisted? had he changed his mind? did he repent of the mischiefs? did he wish the tumults should cease? did he wish to discourage them? What! he, who in the face of the world, comes into parliament, with that same badge in his hat, who told the multitude, in terms as plain as he could speak, "Here I am, pursuing the same cause, with the same wishes and affections for you that I had before; the same man, perfectly unchanged; I am so within, and I bear my mark, my ensign without."—Can any man hesitate to say, that this conduct of his, upon the Tuesday, after all this mischief was done, necessarily connects him with the whole? when I consider of this circumstance, and consider that we hear of him at no fire, though every man knew the mischief; when I hear not of any attempt to stop its course, and see him again, bring the colours of sedition upon his hat; I cannot possibly but conclude, that he then was, and meant to shew himself, the same man that he was upon the Friday; the partaker, the encourager, the friend to these outrages.

This, gentlemen, happened upon the Tuesday; and the same mob, understanding the noble lord extremely well, as he shewed himself in appearance the same friend to them, expressed the like affection for him; for they suffer him not to slink away from the House in an unimportant private way; no, multitudes attend him with huzzas; his horses are taken from his carriage; and he, their leader and their governor, is led with triumph to the

very extremity of the City. All this passes upon the Tuesday; and a part of that very mob, bearing the same colours with himself, shewing their firmness and attachment to him, go some of them, first to Mr. Hyde's, afterwards to Newgate, and commit the devastation with which you are well acquainted.

To suppose a want of connection here, is to shut one's eyes against the clearest light; but upon the Wednesday what follows? He tells the secretary of state, "that he could be of great service in putting a stop to those riots"—Good God! gentlemen, after all this, what are the topics of defence! Why, it is said by my friend, and that seems to be the main argument, that, in truth, all this mischief was not done by any of the Protestant Association, was not done by any man connected with lord George Gordon; that he had nothing to do with them; that is gravely urged, and urged with propriety, because, to be sure, it will be a very essential point in the cause; and if you could believe that after what passed at the House of Commons, that those who destroyed the Romish chapels, and went on with other mischief, were an unconnected mob, undoubtedly you would then have a very different case to decide upon, from what you have at present; because then you would have to judge upon the effect of the noble lord's conduct, and what passed at the House of Commons only. But can this be? is there a man, who has a head upon his shoulders, can believe it? What was the case? A prodigious mob, with blue cockades, came down to the House, beset it, filled up its avenues, and the lobby, and were tumultuous and riotous to the last degree, particularly upon the bishop of Lincoln; the attack upon Mr. Welbore Ellis was not proved, so I don't mention it; and they are then, in plain terms, exhorted by the noble lord to do what was done in Scotland, in effect; that is, they ought to be as well off as their brethren in Scotland; that their brethren in Scotland had redress when they burnt the mass-houses. Immediately after this, that exhortation is complied with; these mass houses are pulled down.

Now here, if I am asked whether I believe that all the Protestant Association did this, or concurred in it, I own I do not believe it. I should be very unwilling to brand 40,000, 20,000, or 10,000 of these men, with that mischief; but that members of the Protestant Association did it, there can be no doubt. You have heard various arguments made use of, and some evidence, to beget a doubt of this. Whom did the noble lord address in the lobby? Certainly members of the Protestant Association, whom he understood to be so; he talks to them as his friends;—they had blue cockades.

In order to introduce a different idea, sir Philip Jennings Clerke said, "they did not look so well dressed as the greatest part of those he had seen in the street." Gentlemen, they had been long crowded in this lobby,

heated and fatigued, and would naturally assume a very different appearance; but they are addressed as such by the noble lord: "We are told to clear the lobby: we will immediately clear it if you desire it." They offer to obey his dictates: "You may do as you please; but you cannot have your petition, if the matter is put off till Tuesday." He addresses them, as men who had signed the petition, who concurred with him in the same views.

Again, what was the object of those who destroyed the Romish chapels? Has it been suggested in all you have heard to day? Have either of the learned counsel suggested to you a possible motive, that induced the miscreants who committed that destruction upon the Romish chapels, unless it was for a repeal of this law? No man has even conjectured at a motive. Then how are they distinguished? By the same blue cockades, by the same cry of, "No Popery! Down with the Papists!" and the like expressions. They hold the same language that they did at the House; they have the same cockades, are acting upon the same motives, or none which one can conjecture; and you will remark, that this mischief does not begin till after the military force have removed the mob from the House of Commons; and then, in something more than an hour after they had been removed from the House of Commons, the mischief begins there. Good God! can there be more demonstrative evidence? or could it be stronger proof to you, if they had actually been soldiers in a regiment, with their regular clothes on, and had in the same garb proceeded to this mischief?

But what does sir Philip Jennings Clerke tell you? He tells you, "that upon the Tuesday, the day the prisoner came down with his cockade, he applied to him as his protector." If he applied to lord George as his protector, was it against another mob? or was it against the same mob, still with the same cry of No Popery! still pursuing the same object from the beginning to the end? for you will understand, and it is very remarkable, that down to the time of the destruction of Newgate, it is extremely clear that no other object had been pursued but destruction. There is not the least proof, there is not the least reason to believe, that any other object had been pursued, except destroying the Roman Catholic chapels, the houses of Roman Catholics, and of those who, either as witnesses or magistrates, had endeavoured to obstruct them in the design they were endeavouring to accomplish.

Indeed, the learned gentleman who spoke last to you, mentioned one as an exception. The presence of the person before whom I speak, would make it very improper and indecent in me to enlarge upon that particular circumstance, in this cause; but I am very far from thinking that that is an exception to what I have said; that they pursued uni-

formly one general design to force a repeal of this Bill, and that their resentment was directed uniformly against those persons who are what they call in friendship with Papists, and what I call friendship to Toleration. They knew, the noble person to whom that circumstance alludes, has always distinguished himself, as the most effectual friend this country ever knew, to the most universal and liberal toleration; and when men were once embarked with a design to produce persecution to one sect of religionists, and indeed with a design to subvert order, government, and law, there was no one man in the kingdom to whom their resentment would be more naturally pointed. I therefore consider that disgraceful mischief as one part of the same uniform outrage, begun, continued, and conducted to one and the same wicked and execrable end: and if this has been their conduct, can any man doubt, that all has been done, from the beginning to the end, by those who have borne the same ensign, who have joined in the same cry?

Indeed, to suppose that when the mob beset the House of Commons, when they engaged in the tumult here, crying out, No Popery! Repeal! Repeal! that another mob, distinct from them, unconnected with them, would go to the Romish chapels, and destroy them, for no other purpose upon earth but that very purpose for which they had been practising their tumults here, that is too absurd to be supposed; for no man can believe it. Besides that, what is the effect? what can be the construction of the noble lord's language to lord Stormont? "That he could be of essential service in suppressing the riots." How could he be of essential service in suppressing the riots? of whom? of a miserable banditti unconnected with the Protestant Association; unknown to lord George Gordon; with whom he had never associated; with whom he had nothing to do; who owed nothing to his exhortations; who never acted under his influence: and yet this is the argument upon which the innocence of the noble prisoner must rest, if it can be supported; that all the mischief was done by a distinct mob, with which those men who came to the House of Commons with this petition had nothing to do.

Whoever seriously considers the application, given an account of by lord Stormont, cannot but see, that the noble lord assumed to himself, and I am afraid too truly, the character of their leader and commander; and in that character he would be able to do very essential service to his country in suppressing the riots. His learned counsel tells you of one instance, a very slender interposition indeed, that was not of his own motion, but at the request of Pond, who comes to him, desires a protection from him, and thus obtains it; and this is mentioned by the learned gentleman whom you last heard, as a prodigious exertion, and much to the honour of the noble

lord. I conceive it is a proof of the power which he told lord Stormont he had, and if he had it, he could have it only because he was the man whose influence this tumultuous assembly was guided by, whose entreaties and persuasions they were likely to attend to.

Gentlemen, I have almost done with the observations I have to make; I am sorry to be so long; and beg your pardon; hoping the nature of the case will be my excuse; but it has been boldly said to you, that the evidence for the crown has been given by the scum of the earth, itself amounting to nothing, and has been met, combated, totally defeated and overpowered, by the evidence given for the prisoner.

I waited, I stretched my mind with my utmost exertion, in order to collect from the evidence given for the prisoner, if I could, what it was that was proved on his behalf; and if I was now asked and obliged upon oath to say what it is the prisoner has proved in his defence, I protest I am not able to tell you. I do not detract from the weight of it a grain, nor would I have you in compliment to my observations detract a grain from it, if you find it of weight.

Mr. Middleton and two or three others—I will not call them the scum of the earth, for that epithet should be given to people only who are low and base, as well as in a humble state of life—there are two or three speak in general terms of lord George Gordon being very desirous to have all this business conducted in a peaceable manner: the same thing is observed to have been said by him in St. George's-fields; and in St. George's-fields, where he had directed what number should be assembled, and said he would not go without 20,000; had directed the cockades, the divisions, and so on; that he all at once altered his mind upon Friday, and would not have them go up in large numbers, but only in small ones.

What does this amount to? I will suppose it to be true; but let me make one remark upon the evidence of Mr. Middleton and another man (I forget his name) who followed him some time after; in which they tell you, by way of guarding against a possibility that the idea of violence should ever enter into the imagination or intention of any of these persons, or of lord G. Gordon especially, that he desired of them, that if one cheek was smitten, the other should be turned; in short, that they would attend to the peaceful doctrines delivered in the Gospel, and would for that time become the simplest and purest Christians.

My objection to this evidence is, that it is a great deal too much; and I own I am not scrupulous in saying, that I have very great doubts of it: it is not the sort of evidence that is at all natural, it is a fact in itself highly improbable, and it must be proved by more and better witnesses than these, before I can believe it.

But I have not come to a circumstance, that, unless I very much mistake, puts an end to it all. In St. George's-fields they are desired to go in a small body, only 30 or 40, with the Petition. It is pretty extraordinary, that if the plan of the noble lord, who took the management of that meeting, was to be deserted, that he did not apply to his committee, and get them to desire the multitude to disperse, and he would himself go up with the Petition. It was left in a loose way; he desired 30 or 40 would go; and away goes the noble lord to the House; and they were to bring it: so that his accompanying them never was understood to be a part of the scheme: but if the noble lord really held such language in St. George's-fields, if he had been averse to great multitudes, and to riotous proceedings; how came it, that in the space of a few hours, when the occasion called for his peaceful exertions—how came it, that in the lobby, with the legislature of this country prostrate at their feet, he should totally forget what he had said before? that he should not ask them to depart? The House is besieged and blockaded, cannot act for riot and disorder; and yet the prisoner, who wishes to disperse the multitude, to end the tumults, does not say one word to them desiring they would disperse! He had totally changed his inclinations; therefore you must suppose, for you cannot do otherwise, that he was a friend to the proceedings that were going on. He had no difficult task to act; they were willing to obey his orders, they would clear the lobby if he desired it. Sir Philip Jennings Clerke saw the men then, not like as they were at the beginning of the day, for they were pressed and fatigued in the mob. Lord George addresses that mob, and tells them “he can give them no advice.”

I protest I should have thought I had been extremely culpable, if unknowing and unknown to any who had then met and had asked me for advice, I had not given it to them. No reasonable man could possibly doubt of the advice to be given; the advice to be given was, “Retire to your houses; leave the parliament to consider of your petition; reason and not force ought to decide upon the merits of it.” No man of understanding, of any reflection, could have hesitated one moment to give that advice; and yet the noble lord, who has them at command and at will, when they ask his advice, says, “he will give them no advice.” That is sir Philip Jennings Clerke's account. The other witnesses tell you he said, “You may do as you please.” Then is it not clear, from all the circumstances of the case, that he would have endeavoured to persuade the mob to disperse, unless he had been concerned in their proceedings?

I need not go over again what followed the cockade on Tuesday, that long interval without an attempt to peace. All this shews a clear continuing design to favour what was

going on. Other expressions are used to shew you, that at different times, even in the lobby, this noble lord advised them to be peaceable: true, he did so; but it was to be quiet and peaceable, and steady: if they are to be temperate, they are to be firm: that is, in short, "Commit no outrage that is not necessary to your purpose, but firmly pursue that purpose; move not; have the act repealed, or overturn the constitution:" for no other meaning can be given to this firmness, to this attack upon the legislature.

Gentlemen, all that has been said by the noble lord, all his inflammatory expressions, are proved to have been spoken before numbers of his friends, and yet not one of them is produced; not one of that Protestant Association who heard that the king had broken his coronation oath, that the king was in the state of having abdicated his throne; not one man attends to prove that no such words were spoken. Are none of that chosen committee, are none of the friends of the Protestant cause witnesses to have said, "I was present; I heard all that passed; no such words ever fell from the noble lord?" Were no persons present in the lobby, no person there to have said that these allusions again and again to Scotland mentioned by Mr. Bowen did not pass? Not one man is proved at any place, or at any time, to contradict that which is sworn to by several witnesses on the part of the prosecution. This, as it appears to me, carries with it unanswerable conviction; I cannot possibly myself believe but that unless expressions of that tendency had been used by the noble lord, it must have been contradicted by numbers of witnesses; but however no such have been produced before you.

With these remarks, gentlemen, at this late hour, I must now put an end to what I have to trouble you with. Let me repeat again, private and personal wishes I have none. I think and hope exactly upon this subject as I should do if I sat in judicature upon the noble lord. If the crime with which he is charged is not proved against him, it is your duty to acquit him, and no man will murmur at the acquittal: but if, on the other hand, the crime is made out against him; if this mischief, from the beginning to the end, was practised by men joining in the same abominable cause, by violence and force to compel a repeal of the law; if the noble lord concurred and bore a part in that design; if he incited it, if he conducted it, if he encouraged it, what must be the consequence? The constitution of this country, nor the constitution of any country can stand, if outrages like these are suffered to pass with impunity.

It is always a painful task to pronounce the sentence of guilt upon any man; but no considerations of noble birth, no other motives that work upon the private feelings and passions of men, will make you deaf to the calls of truth and justice. If you should find yourselves at last obliged,—obliged, for you

will not do it unless you are obliged from the strength of the evidence brought in support of this charge, to decide that the noble lord has committed the crime with which he is charged, every man will be sorry that the noble lord should have been guilty of it, every man will lament that he should have exposed himself to so unfortunate, to so miserable a fate: but yet no such consideration will totally extinguish the regard we ought to have to the constitution of this country, which if the noble lord is guilty cannot possibly stand, unless offenders like him meet with the punishment which they deserve.

Lord Mansfield:

Gentlemen of the Jury; the prisoner at the bar is indicted for that species of high treason which is called levying war against the king, and therefore it is necessary you should first be informed what is in law levying war against the king, so as to constitute the crime of high treason, within the statute of Edward 3, and perhaps according to the legal signification of the term before that statute. There are two kinds of levying war:—one against the person of the king; to imprison, to dethrone, or to kill him; or to make him change measures, or remove counsellors:—the other, which is said to be levied against the majesty of the king, or, in other words, against him in his regal capacity; as when a multitude rise and assemble to attain by force and violence any object of a general public nature; that is levying war against the majesty of the king; and most reasonably so held, because it tends to dissolve all the bonds of society, to destroy property, and to overturn government; and by force of arms, to restrain the king from reigning according to law.

Insurrections, by force and violence, to raise the price of wages, to open all prisons, to destroy meeting-houses, nay, to destroy all brothels, to resist the execution of militia laws, to throw down all inclosures, to alter the established law, or change religion, to redress grievances real or pretended, have all been held levying war. Many other instances might be put. Lord chief justice Holt, in *sir John Friend's case*, says "if persons do assemble themselves and act with force in opposition to some law which they think inconvenient, and hope thereby to get it repealed, this is a levying war and treason." In the present case, it don't rest upon an implication that they hoped by opposition to a law to get it repealed, but the prosecution proceeds upon the direct ground, that the object was, by force and violence, to compel the legislature to repeal a law; and therefore, without any doubt, I tell you the joint opinion of us all, that, if this multitude assembled with intent, by acts of force and violence, to compel the legislature to repeal a law, it is high treason.

Though the form of an indictment for this

species of treason mentions drums, trumpets, arms, swords, fises, and guns, yet none of these circumstances are essential. The question always is, whether the intent is, by force and violence, to attain an object of a general and public nature, by any instruments, or by dint of their numbers. Whoever incites, advises, encourages, or is any way aiding to such a multitude so assembled with such intent, though he does not personally appear among them, or with his own hands commit any violence whatsoever, yet he is equally a principal with those who act, and guilty of high treason.

Having premised these propositions as the ground work of your deliberation upon the points which will be left to you, it will not be amiss to lay a matter which you have heard a great deal upon at the bar totally out of the case. Whether the bill, called sir George Savile's, was wise or expedient—whether the repeal of it would have been right or wrong—has nothing to do with this trial. Whether grievances be real or pretended—whether a law be good or bad—it is equally high treason, by the strong hand of a multitude, to force the repeal or redress.

Thus much let me say, it is most injurious to say this bill, called sir George Savile's, is a toleration of Popery. I cannot deny that, where the safety of the state is not concerned, my own opinion is, that men should not be punished for mere matter of conscience, and barely worshipping God in their own way: but where what is alleged as matter of conscience is dangerous or prejudicial to the state, which is the case of Popery, the safety of the state is the supreme law, and an erroneous religion, so far as upon principles of sound policy that safety requires, ought to be restrained and prohibited; no good man has ever defended the many penal laws against Papists upon another ground: but this bill is not a toleration, it only takes away the penalties of one act out of many.

They are still subject to all the penalties created in the reign of queen Elizabeth; and yet you know queen Elizabeth succeeded to the crown soon after a cruel tyrant of the Popish religion. The Reformation was established in her reign. She was excommunicated by the Pope, and her dominions given away. Her next heir was a bigotted Papist. She was exposed to many plots of assassination: therefore sound policy, and even the preservation of her life, during her reign, called for many penal laws against Papists.

This act repeals no penalty enacted in the reign of king James the first; yet in that reign the provocations given by Papists were great. It began with the Gunpowder Plot; and no wonder severe laws were made against them.

This act repeals no law made in the reign of king Charles the second; and yet you know the dread of a Popish successor; and the jealousy of the court at that time, occa-

sioned many penal laws to be made against Papists.

In the reign of William the third, the security of the new government made penal laws against Papists necessary; yet this bill repeals none made during the first ten years of his reign; it only repeals some additional penalties introduced by an act that passed at the end of his reign, which is notoriously known not to have been countenanced or promoted by him. Therefore, be the merits of the bill, called sir George Savile's, as it may, it is totally a misrepresentation to infer from thence that Papists are tolerated. It is a cry to raise the blind spirit of fanaticism, or enthusiasm, in the minds of a deluded multitude, which, in the history of the world, has been the cause of much ruin and national destruction. But I have already told you the merits of this law are totally immaterial upon this trial; and nothing can be so dishonourable to government, as to be forced to make, or to repeal, by an armed multitude, any law; from that moment there is an end of all legislative authority.

There is another matter I must mention to you, before I come to state the questions upon which you are to form a judgment, and sum up the evidence, from which that judgment is to be a conclusion.

A doubt has faintly been thrown out from the bar, whether it is lawful to attend a petition to the House of Commons with more than ten persons? Upon dear bought experience of the consequences of tumultuous assemblies, under pretence of carrying and supporting petitions, an act of parliament passed in the reign of king Charles the second, forbidding, under a penalty, more than ten persons to attend a petition to the king, or either House of Parliament: but it is said, that law is repealed by the Bill of Rights. I speak the joint opinion of us all, that the act of Charles the second is in full force; there is not the colour for a doubt: the Bill of Rights does not mean to meddle with it at all: it asserts the right of the subject to petition the king, and that there ought to be no commitments for such petitioning; which alluded to the case of the bishops in king James's reign, who petitioned the king, and were committed for it.—But neither the Bill of Rights, nor any other statute, repeals this act of Charles the second: and Mr. Justice Blackstone, in his Commentaries,* treats of this act as in full force; and, as I have told you, we are all of that opinion; and consequently the attending a petition to the House of Commons by more than ten persons is criminal and illegal.—Having premised these several propositions and principles, the subject matter for your consideration naturally resolves itself into two points.

First, Whether this multitude did assemble

* Blackstone's Commentaries, vol. 1, p. 143; vol. 4, p. 147.

and commit acts of violence with intent to terrify and compel the legislature to repeal the act called sir George Savile's?—If upon this point your opinion should be in the negative, that makes an end of the whole, and the prisoner ought to be acquitted: but if your opinion should be, that the intent of this multitude, and the violence they committed, was to force a repeal, there arises a second point—

Whether the prisoner at the bar incited, encouraged, promoted, or assisted in raising this insurrection, and the terror they carried with them, with the intent of forcing a repeal of this law?

Upon these two points, which you will call your attention to, depends the fate of this trial; for if either the multitude had no such intent, or supposing they had, if the prisoner was no cause, did not excite, and took no part in conducting, counselling, or fomenting the insurrection, the prisoner ought to be acquitted; and there is no pretence that he personally concurred in any act of violence.

[His lordship now summed up the evidence *verbatim* to the jury; in the course of which he told them, that he observed that most of them had taken very full notes—that he purposely avoided making any observations upon the evidence, choosing to leave it to themselves; then concluded as follows:]

This, gentlemen, is the whole of the evidence on either side: you will weigh this evidence, and all the observations made at the bar, or which occur to yourselves, upon it—I avoid making any. The points for you to determine are—Whether this multitude were assembled and acted with an intent to force a repeal of this called sir George Savile's act, and if you think such was their intent, whether the share the prisoner had in getting together such a number of people to go down to the House of Commons—in meeting them in St. George's-fields—in talking to them in the lobby—in wearing the cockade on Friday and Saturday—or in any other part of his conduct—had the same intent by the terror of an outrageous multitude, and the violences they committed and threatened, to force a repeal of this act. If there was no such intention either in the mob or the prisoner, he ought to be acquitted: but if you think there was such an intent in the multitude, incited, promoted, or encouraged by the prisoner, then you ought to find him guilty. If the scale should hang doubtful, and you are not fully satisfied that he is guilty, you ought to lean on the favourable side and acquit him.

The Court sat at eight o'clock on the Monday morning; and at three quarters after four on the Tuesday morning the Jury withdrew. They returned into court at a quarter after five o'clock, with a verdict finding the prisoner Not Guilty.

The following Report of this Case is taken from Dougl. Rep. B. R. 569. [edit. 1783.]

“The KING against Lord GEORGE GORDON.

“An indictment for high treason having been found against lord George Gordon, the Attorney General moved, in the last term, (on Saturday the 11th of November,) for a rule upon the sheriff of Middlesex, to deliver to the prosecutor a list of the jurymen he intended to return on the panel, in order that the prosecutor might be enabled to deliver such list to the prisoner, according to the provision of the statute of queen Anne, [7 Anne cap. 21. § 11.] at the same time with the copy of the indictment. He said, this seemed the only method of complying with the meaning of the statute. The words are, that a list of the witnesses that shall be produced on the trial, for proving the indictment, and of the jury, mentioning the names, &c. be delivered to the party indicted, ten days before the trial. This, he said, had been construed to mean, before the arraignment,* and, as there is no issue till arraignment, there can be no jury, strictly speaking, because no jury process can be awarded till issue joined.

“The rule was granted.†

“Lord George was this day tried at bar. The indictment was for levying war against the king. The manner in which the trial pro-

* “By the statute of 7 Will. 3, cap. 3, of which that of 7 Ann. is but an extension, a copy of the indictment was to be given, five days at least, before the prisoners should be tried, in order to enable them to advise with counsel thereupon to plead and make their defence. This must have meant five days before arraignment, because the prisoner pleads ‘*instantly*’ upon the arraignment.

† “This provision in the statute of queen Anne, was not to take effect till after the death of the late Pretender; and this was the first instance in which a person indicted for high treason had been entitled to the benefit of it. The rule was drawn up in the following words:

“Middlesex.

“The KING against GEORGE GORDON, esq. commonly called Lord GEORGE GORDON.

“It is ordered that the sheriff of Middlesex do forthwith deliver to Mr. Chamberlayne, the solicitor for the prosecutor, a list of the jury to be returned by him, for the trial of the prisoner, mentioning the names, professions, and places of abode, of such jurors, in order that such list may be delivered to the prisoner, at the same time that the copy of the indictment is delivered to him. On the motion of Mr. Attorney General—By the Court.”

“Immediately after this rule was pronounced, Erskine moved, that the prisoner might have counsel assigned him, that Kenyon and himself should be assigned, and that they might have free access to him at all reasonable hours, according to the provisions of 7 Will. 3, c. 3, § 1. Buller, Justice, doubted whether this application ought not to be made by the prisoner himself, at the bar, the words of the statute being, “Upon his or their requests;” but the Attorney General consenting, the motion was allowed.”

ceeded was this. Norton opened the indictment. The Attorney General then stated the case, and produced the evidence for the crown; the witnesses being examined in their turns, by the different counsel concerned for the prosecution, viz. the Attorney General, the Solicitor General (Mansfield), Bearcroft, Lee, Howorth, Dunning, and Norton. Kenyon then opened the case on the part of the prisoner; after which, Erskine, his other counsel, told the court, he meant to reserve his address to the jury, till after the evidence for the prisoner had been gone through: he said there was a precedent for this, in the State Trials. [Qu.] Lord Mansfield, upon this, told him, that, as far as he was concerned, he should be glad to hear him at any stage when it was most desirable to himself; and the Attorney General declared, that no objection would be made on the part of the prosecution. The evidence was then produced; and Erskine having observed upon it, the Solicitor General replied.

"The case, on the part of the prosecution, was; that the prisoner, by assembling a great multitude of people, and encouraging them to surround the two Houses of Parliament, and commit different acts of violence, particularly burning the Roman Catholic chapels, had endeavoured to compel the repeal of an act of parliament. [Viz. 18 Geo. 3, cap. 60.]

"Lord Mansfield, when he began to sum up the evidence, stated to the jury, that it was the unanimous opinion of the court, that an attempt, by intimidation and violence, to force the repeal of a law, was a levying war against the king; and high treason. He requested that he might be corrected, if his notes should be deficient in any part, by those of the other judges, and of the jury; and he concluded by telling the jury, that, if the scale should hang doubtful, and they were not fully satisfied of the prisoner's guilt, they ought to lean to the favourable side, and acquit him.

"The trial lasted from eight in the morning, till a quarter after five of the morning following. The jury withdrew for some time, and then brought in a verdict of acquittal. Lord Mansfield, and the other judges, continued on the bench the whole of the time, till the jury retired.

"Some points of law, and of evidence, arose, in the course of the trial.

"1. It was contended, by the counsel for the prisoner, that the statute of 13 Car. 2, stat. 1. cap. 5.—(By which it is enacted, that not more than twenty names shall be signed to any petition, &c. to the king, or either house of parliament, for any alteration of matters established by law, in church or state, unless the contents thereof be previously approved of, in the manner therein mentioned; and that no person or persons shall repair to his Majesty, or both, or either of the Houses of Parliament, upon pretence of delivering any petition, &c. accompanied with excessive number of people, nor, at any one time, with

above the number of ten persons, on pain of incurring a penalty not exceeding 100*l.* and three months' imprisonment.) [§ 2.] was virtually repealed by that article in the Bill of Rights which declares, "That it is the right of the subjects to petition the king, and that all commitments and prosecutions for such petitioning are illegal." [1 W. and M. sess. 2. cap. 2. § 1. art. 5.] But lord Mansfield, in his directions to the jury, said, he had never before heard it supposed that the act of Car. 2. was repealed; and that it was the joint and clear opinion of the whole court, that the Bill of Rights did not mean to meddle with it at all; that neither that, nor any other act of parliament, had repealed it; and that it was in full force.

"2. Some of the witnesses for the crown had given in evidence, that lord George, in addressing the crowd, either at Coachmaker's-hall, or in the lobby at the House of Commons, had alluded to what had passed in Scotland, at the time when it was in agitation to extend the benefit of the provisions of the statute of 18 Geo. 3. cap. 60, to the Roman Catholics in that country, and had said; "The Scotch carried their point by firmness and steadiness;" "The Scotch had no redress till they pulled down mass-houses," or "When the Scotch pulled down mass-houses they had redress." The Attorney General then offered to call witnesses to prove, that mass-houses had actually been destroyed in Scotland. This evidence was objected to, as not having any relation to the present enquiry, or the conduct of lord George, and therefore irrelevant, and inadmissible. But the court over-ruled the objection, on the ground, that the evidence offered would shew what it was that lord George had referred to, and held out as an example, and that it was matter of fact which had an actual existence.

"3. A witness being asked, on the cross-examination, if he was a Roman Catholic, the question was objected to; and the court ruled, that he was not obliged to answer it, because if he were to say he was, his declaration would be evidence against him, and might subject him to penalties.

"4. Sworn copies of certain entries in the Journals of the House of Commons, were produced, and read as evidence, on the part of the crown, without being objected to.*"

* "I, therefore, presume, that sworn copies of the Journals of Parliament, are clearly evidence; though I have known it disputed. It is a general notion, that copies of nothing but records are admissible, if the originals exist; and I remember a motion by Dunning, in M. 12 Geo. 3, (27 Nov. 1771), for a rule on the East India Company, to shew cause, why they should not permit their original transfer books to be produced, on the ground that copies from them could not be read. He, on that occasion, stated the principle to be what I have just mentioned, and said there had been many nonsuits for want of producing the original Journals of the House of Commons. But the Court denied the rule to be as he stated it,

It is recorded of Dr. Johnson, that he expressed his satisfaction at the acquittal of this nobleman on that principle [that the doctrine of constructive treasons, is a doctrine highly dangerous to the public freedom]. "I am glad," said he, "that lord George Gordon has escaped, rather than a precedent should be established of hanging a man for constructive treason." See the introductory remarks on Mr. Erskine's Speech in this cause. *Erskine's Speeches*, vol. 1, p. 69, 2nd edition.

For more concerning constructive levying of war, see Mr. Luders's valuable tract already frequently cited and referred to in this work.

The conclusion of the Review of Lord Erskine's Speeches expresses the most just sentiments with the most impressive eloquence. The writer proves that he partakes the eminent qualities which he has so ably celebrated. The passage is not peculiarly appropriated to this place; but I cannot forbear to avail myself of the first applicable occasion to insert it.

"The professional life of this eminent person, who has, of late years, reached the highest honours of the law, is in every respect useful as an example to future lawyers. It shows, that a base, time-serving demeanour towards the judges, and a corrupt or servile conduct towards the government, are not the

and mentioned several instances where copies of matters, not of record, are admissible; as copies of court-rolls, of parish registers, &c. and lord Mansfield expressly said, that copies of the Journals are evidence, and that he particularly remembered their being admitted on a trial at bar, in a cause in which he was leading counsel for the late sir Watkin Williams Wynn, against Middleton, the sheriff of Denbighshire, on an action for a false return. That Mr. Onslow, then Speaker of the House of Commons, made a point with his lordship, that the copies should be offered in evidence, though nothing would have been so easy in that case as to produce the original Journals. The Court added, that the reason 'ab inconvenienti,' for holding it not necessary to produce records, applied, with still greater force, to such public books as the transfer books of the East India Company; for the utmost confusion would arise, if they could be transported to any the most distant part of the kingdom, whenever their contents should be thought material on the trial of a cause. The rule granted was; to shew cause why copies of those entries in the transfer books, which the party meant to make use of, as relative to the matter in dispute, should not be taken, and read in evidence at the trial; the rule to be served both on the solicitor for the Company, and the opposite party.

"The correct principle, therefore, seems to be laid down by lord Holt in a case of *Lynche v. Clarke*, viz. 'That, wherever an original is of a public nature, and would be evidence if produced, an immediate sworn copy thereof will be evidence. 3 Salk. 454.'"
Bouglab.

only, though, from the frailty of human nature, and the wickedness of the age, they may often prove the surest roads to preferment. It exalts the character of the English barrister beyond what, in former times, it had attained; and holds out an illustrious instance of patriotism and independence, united with the highest legal excellence, and crowned, in the worst of times, with the most ample success. But it is doubly important, by proving how much a single man can do against the corruptions of his age, and how far he can vindicate the liberties of his country, so long as courts of justice are pure, by raising his single voice against the outcry of the people, and the influence of the crown, at a time when the union of these opposite forces was bearing down all opposition in parliament, and daily setting at nought the most splendid talents, armed with the most just cause. While the administration of the law flows in such pure channels,—while the judges are incorruptible, and are watched by the scrutinizing eyes of an enlightened bar, as well as by the jealous attention of the country,—while juries continue to know and to exercise their high functions, and a single advocate of honesty and talents remains—thank God, happen what will in other places, our personal safety is beyond the reach of a corrupt ministry and their venal adherents. Justice will hold her even balance, in the midst of hosts armed with gold or with steel. The law will be administered steadily, while the principles of right and wrong—the evidence of the senses themselves—the very axioms of arithmetic—may seem, elsewhere, to be mixed in one giddy and inextricable confusion; and, after every other plank of the British constitution shall have sunk below the weight of the crown, or been stove in by the violence of popular commotion, that one will remain, to which we are ever fondest of clinging, and by which we can always most surely be saved."

Edinburgh Review, vol. 16, p. 127.

[I very deeply regret that the learned and eloquent writer did not take occasion to animadvert on the constitution of that anomalous unidentical and irresponsible tribunal, the court of "his majesty in council;" a tribunal which is watched by no scrutinizing eye, and controlled by no jealous attention.]

Of the other Trials which were occasioned by the Riots, perhaps the following is the most interesting. It is taken from the Sessions Paper of June, 1780. There is also a Report of it in the Annual Register.

HENRY JOHN MASKALL, apothecary, was indicted for that he, with forty others, and more, did unlawfully, riotously, and tumultuously, assemble, to the disturbance of the public peace, and did begin to demolish and pull down the dwelling house of the right honourable the earl of Mansfield, against the statute, June 7th.

(The prisoner challenged William Greenhill and James Haste: the following were sworn.)

JURY.

Solomon Hudson,	Thomas Hind,
Nathaniel Darwin,	Richard Mole,
George Manvill,	William Thompson,
John Winstanley,	John Hobcraft,
Samuel Calderwood,	James Rogers,
James Marriott,	John Littlewood.

Richard Ingram sworn.

Where do you live?—At No. 1, Weymouth-street.

Did you, at any time on Tuesday night, the 6th of June, and about what time, happen to be present in Bloomsbury-square?—I was there.

About what time in the night or morning?—The first time I was there was about half after one, as near as I can recollect.

That I presume was Wednesday morning?—It was.

What occasioned your going there?—I had spent the evening at Mr. Sparrow's, who keeps a house in Portland-street, Berkeley-square. A little after one I heard there was a fire in Queen-square. I had a wife on a visit to her father and mother in Devonshire-street; I was anxious lest they should be frightened, and therefore I went there.

Did you know lord Mansfield's house?—Perfectly well.

Give an account of the general disturbance you observed at that time about and in lord Mansfield's house?—I saw a great mob and four or five fires, which were alight in the street. There were some people in the house flinging out the furniture.

Did you observe any persons in the house at that time?—Yes. I observed a man and woman, and some children; they were flinging out some furniture, and I saw some children at the door. As I passed by I was pressed by the mob. I stood opposite lord Mansfield's door. There were some children then bringing out books and burning them upon the fire.

What number of the mob do you conceive there were at that time assembled round the house?—A great number.

Were there 100, 200, 50, or 20?—There were a great number upon the duke of Bedford's wall, a great number in the street, so that I passed with difficulty through the mob.

Then you were in your way to Devonshire-street?—I was.

At that time did you see the prisoner at the bar, Mr. Maskall?—I did.

Were you acquainted with his person before?—Some years. I have known him personally, though not intimately.

Whereabouts was he at the first time you saw him?—Standing facing lord Mansfield's, by the fire, nearest to lord Mansfield's door, with his hand upon a boy's shoulder who was putting books into the fire.

Did you observe whether he had any thing in his hat at that time?—Not at that time, I did not observe that he had any thing in his hat; I passed on immediately to Devonshire-street, to see if my wife and her father and mother were safe.

Explain to the jury what it was he was doing to the boy?—I looked on it that he was encouraging the boy; but I passed on; I did not then make observation, but passed on to Devonshire-street, to see if the family were safe. I did not then knock at the door for a very particular reason.

You did not stop, but passed on?—I might be detained in passing by the door in the whole five minutes.

Was this all you observed the first time when you were making your way to go into Devonshire-street?—I saw some furniture flying out, particularly a remarkable table, which struck my eye; it was thrown out of the two pair of stairs room.

Were you near enough to observe what became of the boy, or what was done with the books he had with him?—There were several books which were burning upon the fire at the time; and this book, I saw the boy bring it down; he was a well dressed little boy. It was a large book; he just had come to the fire as Mr. Maskall clapped his hand upon his shoulder. The boy brought the book upon his head, it was a large book; it seemed to me to be a folio.

From the manner in which Mr. Maskall did that, did it appear to you that it was done for the purpose of preventing the book from being thrown into the fire, or encouraging him?—He put his hand upon his shoulder in the manner one would to encourage a boy, to say good boy; but I was at such a distance that I did not mind the words.

Did you then go on to Devonshire-street?—I did, but I did not speak to any part of the family there, for I was pleased the family were abed for a singular reason; it was the only house I believe in the street that was not illuminated.

How long do you think it might be before you returned again to Bloomsbury-square?—About a quarter of an hour. I have in that neighbourhood a faithful honest servant, who

lived with me many years, one Soss, an embroiderer; I went to see if he was safe, I saw him at the window that he was safe; then I returned again to Bloomsbury-square.

What time might it be before you returned to the square?—I stood some little time in Devonshire-street, to see if there was any light in the house, and I looked down into the area, to see if they had prudently concealed any light below stairs; seeing none, I would not disturb nor alarm my wife.

What is your conjecture as to the time?—I apprehend, from the time I left Mr. Sparrow's, till I got the second time back to Bloomsbury-square, that it must be near two o'clock.

When you returned to the square did you see the prisoner at that time?—Not immediately on returning to the square, for I stopped at the first and second fire; but in going on farther, I saw the gentleman at the bar standing with a blue cockade in his hat; another person had hold of his arm at that time; some books were then brought out to the door, and they were flinging some things out of the windows and pulling down the window frames; and the shutters were flinging out on one side of the house, while some furniture was flung out on the other part opposite the duke of Bedford's. I took particular notice of some books that were then burning; I made the observation, that "the books could have done no harm, the mob carried their resentment too far." Upon that a man on my left hand said, "What, Sir!" in a menacing tone. I thought myself in some danger; I corrected myself immediately, and said, "Lord George Gordon will get this bill repealed, it is a pity things are going so far." Mr. Maskall stood upon my right hand within one; he looked over that man's shoulder and said, "It is a damned lie, the Bill will not be repealed." The man that said "What, Sir!" was on my left hand, Mr. Maskall was next but one to me on my right.

What happened upon that?—A person upon my right hand, who stood even with me, said, "Maskall, you are always in sedition," or, "you are a seditious person," I cannot say which, but words to that effect; I looked Maskall full in the face; he put his hand upon the man's shoulder that stood on my right hand between him and me, and said, "That man in the black cockade," meaning me, "is a spy;" I had a black cockade in my hat.

How came you to wear a cockade?—I have had the honour to bear his majesty's commission these 30 years.

In what capacity?—Upon the physical staff.

What is the nature of your appointment, what were you in the army?—In the last war surgeon to the royal dragoons, operating surgeon to the army. Since that I have been promoted.

You are entitled to pay?—Yes, and to an honorary rank, I rank as a captain in the

army. The man on my right hand next Mr. Maskall seized me by the collar, and cried out, "Spies! spies!" meaning me and my companion, as I supposed.

Court. This man, if I understand you right, had before said to Maskall, "you are always in sedition?"—A. No; another person who stood even with me said that; the person whom I made the remark to it was who called him seditious. Several people echoed his words; and the people who were about shoved me through the ring of people who were there, and then back again.

How far do you think you were shoved backwards and forwards?—About three or four paces backwards and forwards.

Were you by this shoving removed any farther from Mr. Maskall?—Getting back again, I was shoved nearer to Mr. Maskall.

Did you afterwards make any observation upon Mr. Maskall's conduct?—I got hold of a person who had a leather apron on, and appealed to him, thinking myself in danger, whether lord George would not repeal the bill. By applying myself to these people, particularly a man whose button I laid hold of, who said lord George would repeal the bill, I slipped from them, and then got behind Mr. Maskall. Just then the guards came up; they came as from Russell-street way. I did not see the guards till they were very close upon me. Maskall, who was before me at this time, pushed forwards some boys, and huzzaed and cried out, No Popery.

He or the boys?—He did, and the boys did the same.

How far distant might he be from the guards at the time?—The ranks closed. Mr. Maskall went up close to some other of the mob, close to them; he huzzaed and called out, No Popery.

Had he his hat on or off then?—He pulled off his hat and huzzaed, and said, No Popery. He had a blue cockade in his hat before he pulled it out. The mob pressed close on the guards; the officer of the guards pulled off his hat and told them that he would not hurt a hair of their heads, but desired them to disperse. I lost sight of Mr. Maskall. Then the guards wheeled to the right; presently after I saw Maskall come near Bedford-wall again, and then there was a party of people, about a dozen, who came with a blue flag, and called out, "Where next, where next?" and then came up towards Mr. Maskall.

Do you recollect how far they were from Mr. Maskall?—They seemed to come from the nearest fire, next to the duke of Bedford's.

How near do you think they were to Mr. Maskall when they said, "where next?"—They were about 20 yards I fancy from where we stood. They came very near to where Mr. Maskall stood; and when they asked "where next?" I heard the word answered, "Duke."

Do you know who gave that answer, "Duke?"—I really believe it was Mr. Mas-

kall. It was the tone of his voice, but I will not so positively swear that it absolutely was his voice; but I most firmly believe it.

What became then of those persons who had the blue flag before them?—They turned about and went away; and I think then they returned back again. I did not see them go to any particular spot; I saw them join the crowd.

How near were you to Mr. Maskall at this time, or did you get near to him at any time afterwards?—At the time I came up to Mr. Maskall, I might be a yard and an half or two yards from him.

Were you near enough to distinguish whether the voice which made that answer, "Duke," was either the voice of Mr. Maskall, or of somebody in his company?—I did not look at his face at the time the words were uttered, or I might have been more certain, but I most firmly believe it was his voice from the tone, and the impression that his words had made on me but just before.

After that did you hear any thing said to Mr. Maskall, and any body with him, and any answer given by Mr. Maskall afterwards?—After that I saw Mr. Maskall go towards Russell-street, and I went towards home. I had occasion to stop at the corner of one of the streets, and Mr. Maskall, with three or four persons whom I had seen him walk with towards Russell-street, seemed then to be halting and close to a bulk. I heard a man who had a paper in his hand say, "Why leave out Peterborough and Bristol?" Mr. Maskall was in arm-hold with another person, and there were three or four more with him.

You said he halted?—Yes. I did not immediately follow them to Russell-street, but within a minute or two I did; and I stopped a minute or two at the end of one of the streets. As I turned again into Russell-street it appeared to me as if Mr. Maskall and the people with him had made a sudden halt just at the instant. It was in Russell-street, on the left hand side of the way. A person who seemed to hold a paper in his hand, or something that appeared to me like a paper, said, "Why leave out Peterborough and Bristol?"

To whom was this addressed?—It appeared to me to be addressed to Mr. Maskall and the person who was with him in arm-hold.

Was any answer given, and by whom?—The answer was returned by Mr. Maskall. As near as I can tell the answer was, "They are not left out, I have not scratched them out, but do not stay long in Devonshire, but go to the Bank, there is a million of money to pay you for your pains, and at the Excise-office there are 40,000*l.* not paid in."

After these expressions, did you observe any other different persons address themselves to Mr. Maskall?—No; I passed them close.

Did you in your way home, or in the course of the evening afterwards, see any other per-

sons address themselves to Mr. Maskall, or Mr. Maskall address himself to any of them?—No, after that I saw no more of Mr. Maskall.

What became of you?—I made an observation upon his conduct, and I went home.

Were you near enough to Mr. Maskall to be sure that he was the person who gave the answer you have just now mentioned?—I am certain; I was very close at the time. I turned close round the corner; the people were then against a bulk at the corner of the street, and he stood nearer to the channel.

Were there many other persons about him?—Three or four that he went with; they appeared to be the same persons whom I saw him go with towards Russell-street.

Were there any other indifferent persons there besides yourself at that time?—There was another person in the street.

Cross-Examination.

You live at No. 1, in Weymouth-street?—Yes.

Whereabouts is that?—It comes into Portland-road.

Your wife, I think you say, was upon a visit in Devonshire-street?—At her father-in-law's.

Was it the way then to go through Bloomsbury-square?—I could go no other way from where I was spending the evening that I know, unless I had gone across the fields, which would not be safe and prudent.

How happened it that your wife should be upon a visit to her father and mother's without you?—I have expected for seven or eight months past to be called upon full pay, and consequently when I came to town I did not take a house; she has always when I have been in town been at her father's.

Then because you soon expect to be called upon full pay, you do not take a house, but your wife goes and lives with her father and mother, and you take lodgings?—Yes.

What is the meaning of that?—It is a great deal more convenient to be with a parent who loves her, than at a lodging.

So when you went to the house, from the affection you bear your father and mother, you never knocked at the door to see if they were safe, but immediately left them?—Finding there was no light in the house, I was pleased that they were a-bed, and I thought it would be cruel to alarm them.

Was there no other reason for your not entering that door?—No, for I sat up the next night in that house.

Are you at liberty to enter that house when the father is at home?—I have not visited in that house for these nine years, though Mr. and Mrs. Morris have been frequently in the country with me for three or four days together.

Does not your wife live entirely with them, and separate from you from the ill usage she has received at your hands?—So far from it,

that my wife is often with me, lies with me, and lives with me, and no man ever loved a woman better than I do her. I married her for love, and I love her still dearly.

At half after one you say you past by?—I believe it might be thereabouts.

Mr. Maskall was then just before lord Mansfield's door in Russell-street?—I do not know the name of the street which lord Mansfield's door comes into; he was opposite that door which comes out into the street.

There was, I understand, a fire just before the door?—Yes; there were three or four fires.

Were there no soldiers there at that time?—I observed two sets of soldiers. There were some soldiers on the pavement, on the same side with lord Mansfield's house in the square. The soldiers that I saw come as a guard to disperse the mob, came from Russell-street.

I am asking, whether there were not a number of soldiers that were in a circle before the house when you came there at half after one?—I did not see them. I saw the soldiers drawn up upon the pavement, but I did not see any when I first went there.

Was it on the pavement immediately before the door?—In the square on the side of lord Mansfield's house.

Then the soldiers were in a line upon the pavement down the square, did they cross the street to the duke of Bedford's wall?—No, I did not see them cross to the duke of Bedford's wall.

How were the soldiers situated when you came back from Devonshire-street?—I did not see the soldiers then; I saw the soldiers as I came from Russell-street, when I first crossed Bloomsbury-square upon the pavement next lord Mansfield's; I mean the pavement in the square. In no other position did I see soldiers, or take notice of them, but there might be.

At that time, you say Mr. Maskall had no cockade in his hat?—I did not say that; I say I did not perceive any.

Did you speak to Mr. Maskall at that time?—I did not; I did not speak to him the whole night.

When you returned there, you were so lucky as to see Mr. Maskall again?—I did.

Whereabouts was he then?—Nearer to the duke of Bedford's wall, nearer to the last fire in the square.

Court. If I took you right, when you first saw the prisoner, he was on the opposite side of the street, facing lord Mansfield's?—He was.

And when you saw him again, upon your return, you then saw him near the duke of Bedford's wall, was it near to Russell-street, or the gate?—Between Russell-street and the gate.

Counsel for the Prisoner. At that time that you saw him between the duke of Bedford's gate and Russell-street, was there a line of soldiers then between the mob and you and

him?—A. I did not perceive any line of soldiers then on that side next to the house; there were soldiers upon the pavement on the other side.

Was not the pavement rather too close to the house for them to stand there; the house was on fire then?—No; the house was not on fire.

Were the fires within or outside the soldiers?—There were fires along Russell-street up to the square, there were four or five of them; I took no notice of the position of the soldiers farther than I have mentioned; there were four or five fires that way from the street along the square, looking towards Southampton-row.

You are very particular as to the situation of the persons, one to your left hand, and the other to your right?—It made a very great impression upon me.

What did?—Every thing I saw that night; when I went the next day to Devonshire-street, I found my wife so extremely ill, in consequence of a fire which had happened that night, that I was obliged to sit up with her all night; her father was gone to the Excise-office, her mother was gone into the country; I then mentioned Maskall's name, and said I thought his behaviour very wicked.

And you mentioned all the circumstances that it was necessary to tell to-day?—Not necessary to tell to-day; for I mentioned it the next day, and on the Thursday publicly in three different places.

Do you happen to know the person who said, "Maskall, you are always in sedition?"—Yes.

What is his name?—Molloy.

Did not you hesitate a little in that answer?—No; I have declared it publicly before.

Molloy is a friend of yours, is he not?—Only a very slight acquaintance; he spends the evening in the same house that I often do.

Was he with you before, or only just at that critical minute?—I had desired him to go with me from Sparrow's, lest there should be any danger to my family.

He set out with you from the place where you spent your evening, to Devonshire-street?—Yes.

You both set out together, and you both returned together; what was the reason he gave for saying Maskall was always in sedition?—He gave me a reason why he said so.

Molloy returned with you from Devonshire-street?—He did.

He came up directly with you to the place where Mr. Maskall stood?—I will not take upon me to say he came up directly with me, because in a crowd people are often a little separated; he came up and stood close to me, and was so when he said to Maskall, "You are always in sedition."

Upon which Mr. Maskall said, "the man in the black cockade is a spy?"—Yes.

He meant to compliment you upon that occasion?—I believe so.

I think you say you are a surgeon in the army?—An apothecary.

Do other apothecaries in the army wear cockades?—There is a standing order of the army, in order to distinguish the gentlemen upon the staff, and the surgeons in the regiment, by prince Ferdinand, the marquis of Granby, and general Conway, that they should be distinguished by a separate uniform.

How long have you received half-pay?—Seventeen years.

Have you constantly received it for seventeen years?—I have sworn to it constantly, I swore to it last Monday, before justice Wright; I took out my certificate at the War-office.

For seventeen years you have received this half-pay?—I perceive your quibble, it is by way of exposing my character; I have not received the whole of it, but only a part of it; for in order to discharge some debts that I owed the regiment which I was surgeon to, I parted with part of it.

I do not mean to quibble, but it is my duty to sift your character: have not you been a bankrupt within these few years?—Not a few years; it is sixteen years ago.

And you have received your half-pay ever since, instead of your creditors?—My creditors have nothing to do with it, as I understood.

You have been an insolvent debtor since that time?—The government, some years ago, held out to officers an act of parliament, that they would be relieved from any sums of money that they had taken up upon usurious contracts upon their pay; a great number of officers embraced that opportunity, and exposed their names and characters, without any effect, for it had no effect in the Pay-office.

You have shewn sagacity enough in the course of this business this morning to understand the question I have put to you: Have you been in jail within these last sixteen years?—No; I never was in jail.

Have you or not been cleared under an Insolvent Debtors Act?—Under that clause of the act for the benefit of officers I was, but I never was arrested, or had any demand made against me for the monies.

Have you ever had your certificate as a bankrupt?—I had it immediately.

Have not you within these three or four years assigned over your effects for the benefit of your creditors?—Yes, upon leaving Kingston, I did.

How long ago was this?—Last August.

These effects were assigned over by a bill of sale, I believe?—They were.

How long was it that you were near to Mr. Maskall, within his sight, upon your returning from Devonshire-street with Molloy till the time you left him, when the guards came up?—I had not been very long there before these words passed, that I was a spy.

How long was it?—I suppose I had been in that circle four or five minutes when I made the observation, that it was a pity that the books should be burned.

Then, in four or five minutes after you had been there, he went down to Great Russell-street?—I stopped some time; when I returned, I did not see him in the place where I first saw him; but in going on farther, I saw him; I stood by him, and there happened the conversation I mentioned.

You saw him when the guards came up?—Yes, and I saw him before the guards came up.

You had omitted seeing him some little time?—I was turned during the time, I was shoved about by the mob; but just as I got loose from them the guard came up, and I then got behind him.

You said, I think, that you saw him opposite Bedford wall?—Yes, near the spot where I had left him.

Then you continued to see him near Bedford wall when you returned, till the time he walked towards Great-Russell-street?—Yes.

At that time he was walking with a gentleman under his arm?—He had hold of a gentleman, or a gentleman had hold of his arm.

What kind of a man was that, a fat or a lean man?—I did not take particular notice, he seemed a good looking man.

So these two gentlemen were walking away down Russell-street?—With three or four other persons.

What sort of persons?—They did not appear very reputable persons.

So you took the opportunity of walking after them?—It was time for me to go home.

Just at the time Mr. Maskall did?—He had gone two or three minutes before.

You do not mean that you dogged him?—I did not mean to dog him.

You heard this conversation about the Bank and Excise and God knows what?—I saw and heard every thing I related.

And they could see you too, I suppose?—I do not doubt it.

Was Molloy with you at that time?—He was.

Did you not think it rather imprudent in Mr. Maskall to hold this treasonable and diabolical conversation, when they saw you, who Mr. Maskall had before said was a spy?

Counsel for the Crown. He did not say they saw him.

Counsel for the Prisoner. Yes, he did say so.

One of the Jury. I do not understand him so.

Counsel for the Prisoner. What did you say?—I said they might have seen me. I turned round the corner as I said before, and they seemed to have made a sudden halt.

If four or five people were in company and they had made a sudden halt, in all probability they would have looked round so as to have seen you, you were near enough to hear their conversation and to see Mr. Maskall's face,

and therefore it was possible he might have seen you?—It was.

Was it not more, was it not probable?—I think not, while he was talking to them.

So Mr. Maskall, who before had told the mob that you were a spy, was so imprudent as to hold this conversation while you were at his elbow?—I believe they made that sudden halt not supposing that I was near them. When I turned up the street they were not there; I did not take notice of them.

So there were Mr. Maskall and the gentleman who was with him, and three or four persons who did not look quite so creditable, and Molloy and yourself?—There were.

There was no mob at that time in the street?—I saw no mob in the street.

I would not misunderstand nor mistake what you said, you said some time ago, when asked who was in the street, that no indifferent person was in the street besides yourself?—I did not say that; the question asked from my lord, was, whether there was any indifferent person in the street. By indifferent person I comprehend my lord meant any indifferent person with him; when it was asked, any person like myself, I said yes.

Court. I meant persons whom the prisoner might be cautious of speaking before?—I observed there was only that one person with me whom I mentioned before.

Court. That was Molloy?—Yes.

Counsel for the Prisoner. What time was this?—I was abed a little after three o'clock.

How do I know when you go to bed? I am asking you at what time this conversation in Russell-street was held?—I suppose I was twenty minutes going home and getting to bed.

Then it was about half after two?—I suppose so, or rather near three.

I am desired to ask you whether you are not now an insolvent?—No, I am not.

Court. Did you give any account of burning the books when you were examined before the magistrate?—A. I think I did. I think I mentioned every circumstance then as I have now mentioned them; and I declared I had no view whatever of any reward. I declared the whole on Thursday to a friend of mine, who will appear. I declared it likewise to some gentlemen at the coffee-house. I likewise declared it afterwards at Mr. Sparrow's. And when Mr. Maskall and his counsel were admitted before justice Wright, I desired they might cross-examine me, and take any notes they pleased. I believe I see the gentleman in court who took some memorandums.

Court. As to the reward, that is out of the case, for he discovered it next day?—A. I did, but I declare to God and this court I never had any idea of any malicious intention against Mr. Maskall.

It does not appear upon the examination, as returned by the justice, that any thing is said about "the books having done no harm."

Sir Thomas Mills sworn.

Whether you were at lord Mansfield's house upon Tuesday June 6th, at the time of the riot?—I was.

Do you know the prisoner?—I do. I knew him by sight before.

Be so good as to tell your story in your own manner?—At about a quarter after 12 o'clock on Tuesday night, or rather Wednesday morning, we heard the mob coming up the east side of Bloomsbury-square.

Where were you?—In my lord's house. They then began to break the windows in the dining parlour of the house. Lady Mansfield and the ladies came down stairs. I conducted lady Mansfield to Lincoln's-inn-fields, and left her in a house there. I instantly returned, knowing there was a detachment of the guards in the square in order to make them act and save the house. I found the officer at the head of his detachment in the square at his lordship's house. I applied to him to enter the house with his men; he told me that the justices of the peace had all run away, and that he would not and could not act without the civil magistrate. I had some warm words with him, pretty high, but he insisted upon not acting without the civil magistrate. The mob heard me talking in this manner, they seized me and dragged me towards the fire; there were two or three fires then near lord Mansfield's house, and they threatened to throw me on the fire; one of the people behind called out to me, "Maskall will protect you, call to him; there he is very active."

Counsel for the Prisoner. You know very well that you are not to give an account, particularly in the case where a man's life is at stake, which is not evidence.

Sir Thomas Mills. I looked for him. Some gentlemen interfered and rescued me from the hands of the mob; at that time I looked and saw the prisoner at a good distance from me, beyond all the fires; they happened at that time to be bringing out lord Mansfield's gowns and wigs, when the prisoner with others, upon these things being thrown into the fire, huzzaed and cried out, "No Popery!" He had a blue cockade in his hat, I afterwards went to two or three streets in the neighbourhood where I was told any justices of the peace lived, which might take me up near half an hour, and carried it as near as I can guess to a quarter or half an hour after one, when I returned. I found no justice at home any where. I returned again, and they had then got into the library; there were five or six coming out at a time, with papers and parchments and books in their hands; at that time I saw the prisoner upon the upper step of lord Mansfield's house.

Where were you?—In the square. I tried to make a dash to get round the fires, as I could not go between them, and to get upon the top of the stairs, in order to expostulate

with them once more about the papers and the books.

I do not recollect that you mentioned any expostulation with them before?—I did speak to several of them before.

Not to the prisoner?—Not to him; I meant to expostulate with the prisoner at that time.

Counsel for the Prisoner. You said 'with them'?—With him I mean.

Court. You said 'expostulate with them once more'?—I did at first, upon seeing him, mean to call out to him to protect me; three or four of them, who were pretty well dressed men, and whose faces I should know, if I were to see them again, laid hold of me and advised me "not to go a step further, for otherwise I should be thrown into the fire or into the area, for they had marked me, and were determined to do it." I then thought it more prudent to leave them, and I never saw the prisoner after that to my recollection. I went down to the secretary of state's office to know whether there existed any civil magistrate; and I came back again about a little before three, and I then looked round for the prisoner, but I did not see any thing of him.

You say you saw the prisoner upon lord Mansfield's steps?—I did.

Did you either hear him say any thing, or see him do any thing?—I did look, and I cannot, in my conscience, swear that I saw any thing in his hand; but there was an activity about him; they were passing him with papers and books in abundance.

I ask you, rather for form's sake than any thing else, to describe to my lord and the jury the situation in which this house was left by the mob?—I was there all the night, excepting those times I mentioned, when I went away: I left it at six o'clock in the morning, when the roof fell in.

What did they pull down?—They threw out pictures; they first emptied one room, then another room; when I came back at three o'clock, I did not conceive them to be the same mob I left; they seemed to have changed their complexion, they did not seem to be so well dressed.

In fact, the house was totally demolished; except the bare walls?—Yes.

Was the wainscoting demolished?—Yes, every thing. I went into the house a quarter after three o'clock, then there were fires in three or four of the apartments.

Cross-Examination.

When you came back, they seemed, you say, to be another mob?—Yes.

What time was it when you returned from conducting lady Mansfield to Lincoln's-inn-fields?—I think about half an hour; I walked with her down, and made all the haste I could back.

It was after twelve o'clock when you conducted her ladyship out of the house?—Yes, a quarter after twelve.

When was it that the windows of the parlour were broke; what time was that?—I think that might be about a quarter after twelve o'clock, before I left the house.

What time was it that you had the conversation with the officer of the guards?—Immediately upon my return.

How long might that conversation last?—A few minutes.

How long had you been kept by the mob when you were seized and dragged in the manner you have described?—Two or three minutes probably; they had time to drag me about, and tear my coat off my back.

Can you describe what time that was when the person called out, 'there is Maskall, call to him for assistance'?—About three quarters after twelve o'clock.

It was that when you returned?—It might be a few minutes more.

As nearly as you can, what time was it that you heard that man call out to you to call to Maskall to protect you?—Before one o'clock.

At that time he was at a considerable distance from you?—Such as the distance of three or four fires.

What distance might that be?—The breadth of a house.

That is very indeterminate?—Seven or eight yards.

After this you were rescued?—I was.

Then you went in search of magistrates in order to protect the house?—I did.

How long might you be absent upon that?—Half an hour.

Then this brings you to a quarter after one o'clock, or more?—A quarter, or near half an hour after one when I returned.

When you returned, was that the first time you took notice of Mr. Maskall's being upon the steps?—It was.

About half after one o'clock?—Yes.

Did you see any body else upon the steps besides Maskall?—Several with blue cockades.

Was there any body that you knew?—No, not one.

You say you had seen Maskall before?—Yes, I have seen him many times; I knew him by sight.

Have you ever been in company with him?—Never; I can tell you how I know him by sight; I lived in his neighbourhood six or seven years; I have a house in Poland-street; he lives not a great distance from that; I used to pass his door five or six times in a week, and I have seen him in his shop frequently.

You have, however, often seen him before?—A hundred times.

How came you then to go to the prison to see Mr. Maskall, before you went before the grand jury?—I had an order to some other people, and therefore I went in.

Whom did you carry with you?—I did not carry any body.

You had an order to carry other people?—

My lord's servants, who went without me; I happened to be out of town, and they went without me.

Why did you go?—To satisfy myself.

Then you were not satisfied before?—I was satisfied before perfectly.

You said you went there to satisfy yourself; if you were satisfied before, why did you go there, the intention of going down was to be satisfied, whether it was Mr. Maskall or not?—I had not seen Mr. Maskall for two or three years, not since I left that neighbourhood.

You were not satisfied before you went down?—I was perfectly satisfied.

Why did you go then; what was the view with which you went?—That is a question I do not see any necessity for answering.

You can have no objection to answer why you went there?—I had no kind of view in going there, I had an order to carry my lord's servants, and they went with some other order.

Then you went without these people, what was your motive for going there?—It being in the night, I might have occasion to go to satisfy myself that it was the man.

Then you went to be satisfied, not being satisfied before?—I was perfectly satisfied before. I had not seen him for some years, and there might perhaps be doubts.

Had you any doubts?—In my conscience I cannot say I had a doubt.

Why might there be doubts if you had none?—Yes, in the night, and in a tumult of that sort, it is very reasonable to suppose so.

And you went down there to be satisfied?—I went there to satisfy myself.

I wish to know whether you were an object of an indictment for an assault some time ago?

Counsel for the Crown. Are we come here to try any indictment for an assault?

Court. No: I was going to stop the counsel for the prisoner, if he had not stopped himself, when he was enquiring the private situation of the last witness with his wife.

Counsel for the Prisoner. My lord, I meant to ask whether sir Thomas Mills had not been indicted for an assault, that he had been acquitted, and whether he had not made an affidavit which is the subject of an indictment?

Court. A witness must be in a dreadful situation if you can examine into a private fact relative to him, which he knowing nothing of before, cannot disprove. You may impeach any man's character by calling witnesses to his general character, but you cannot enquire into particular facts.

Counsel for the Prisoner. When was it you first made your evidence known?—A. Frequently to my private friends.

When was it you first mentioned this?—The very day after; I did not go to bed that night.

Did you go before any magistrate?—No, I

did not choose that; it was with difficulty I was brought here. I was pressed. I did not make up my mind about coming here till very lately.

Not till you went before the grand jury?—Not till I went before the grand jury.

That was the day you went to see Mr. Maskall?—I am not perfectly sure of that.

Counsel for the Crown. You stated that you had an order to go to the prison where the prisoner was confined, for the purpose of seeing him?—A. Yes.

Was it in consequence of that order or request that you went?—I asked for the order of admission for lord Mansfield's servants. It was to admit the bearer, or some such thing.

Counsel for the Prisoner. Were any of lord Mansfield's servants present during the time you say you saw Mr. Maskall upon the steps? A. No, not with me, I believe. But the first time I saw him there were, and there were some about me at the time the mob laid hold of me.

At the time you say you saw Mr. Maskall on the steps were they near you?—I do not recollect that they were.

When were they with you before?—I spoke to them frequently in the course of the evening.

You never saw any of lord Mansfield's servants after that?—Yes; I saw them till six in the morning in the square and about.

Did you see them any ways near you at the time you describe to have seen Mr. Maskall?—I do not recollect that.

Counsel for the Crown. Whether you have not related, and particularly to Mr. Chamberlayne, this story, and the recollection of the prisoner before you saw him in prison?—A. Yes.

Counsel for the Prisoner. The witness's conversation with Mr. Chamberlayne is not evidence.

Counsel for the Crown. Were you or not desired by any body to go to the prison to see the prisoner?—A. I am not sure whether Mr. Chamberlayne desired me to go; I think he did.

Did he or not give you any note?—He gave me a note.

And in consequence of that, after you had told him your story, did you go to see the prisoner?—I did.

Court. You mentioned that they were bringing out lord Mansfield's gown and wig when the prisoner, with others, huzzaed, and cried out 'No Popery'?—A. Yes.

Whereabouts was the prisoner then standing?—I was at the corner of the square, at the corner of lord Mansfield's house; the prisoner was about eight or nine yards from me towards Southampton-buildings.

How far from the house?—Four or five yards in front of the house, and seven or eight yards distance from me.

William Grove sworn.

You are lord Mansfield's porter?—I am.

Do you remember being in the house, when the mob came there?—Yes.

About what time did they come?—As far as I can recollect between twelve and one.

Did any of them get into the house?—They did.

By what means?—They first broke the windows. When they broke them, I chained up the door, to keep them out as long as I could. They forced the door open with iron bars, and came in that way.

When they got into the house, what did they do?—They began throwing out the furniture.

Did they do any thing to the house?—After the furniture was thrown out, I saw them tear down the window-shutters.

When did you quit the house?—I believe between four and five o'clock.

During the time you were there, besides the furniture being thrown out, was any thing else done?—Some of the iron rails were pulled up.

Was any thing done to the inside of the house, the waincoting, and so on?—I saw only the shutters pulled down, I did not take any particular notice afterwards. The door was split down.

What became of the door posts?—I did not take any particular notice about the door posts. The door was taken down.

What condition was the house in in the morning?—Totally burnt.

Cross-Examination.

Whether you happened to be upon the steps at any part of the time?—I was some part of the time.

Did you see Mr. Maskall there?—No, I did not. I never saw him till I saw him at the office in Bow-street.

What time were you upon the steps?—I think between one and two.

And you saw nothing of Mr. Maskall?—No.

Counsel for the Crown. Was this before they broke into the house?—A. It was after they broke into the house.

Was there any body upon the steps at that time but yourself?—I saw Mr. Loton there.

Did you see any people there whom you did not know?—There were a great many of the mob about the door then.

But upon the steps?—Yes; several of them were talking to Mr. Loton.

Counsel for the Prisoner. I suppose you were backward and forwards pretty often in the night?—A. Yes, to get out things; I did not take any particular notice of any body.

You saw the fires?—I did.

You saw the people, who were standing about the fires?—Yes; but not to know any of them.

What time might it be, before they began

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to burn the house?—I think it was about four o'clock.

Counsel for the Crown. You were upon the steps you say?—A. I was.

You are not very correct as to the time?—Yes.

When you were upon the steps, Mr. Loton was there?—Yes, I remember his being upon the steps talking to the mob who were about the house.

Were any of them in the house at that time?—Yes, several in different rooms.

Did you observe any thing particular that they were about?—I saw them bring a large picture out of the parlour, which was sir Thomas Mills's picture.

Did you observe any thing else particular at the time you were upon the steps?—It was in such a confusion, that I cannot recollect.

Counsel for the Prisoner. I think you said you believed it was between one and two?—

A. It might be so, but I will not be certain.

Court. Is not Molloy here?

Counsel for the Crown. I believe he is.

Counsel for the Prisoner. His name is upon the back of the indictment.

Court to the Counsel for the Crown. Do not you mean to examine Molloy?

Counsel for the Crown. We do not mean to examine him; he is here, I understand, if they please to examine him.

Counsel for the Prisoner. I beg it may be known he is not subpoenaed by us.

Court. Mr. Maskall, the counsel for the prosecution have finished their case, and examined all the witnesses they propose to examine, have you any thing that you choose to say for yourself, or any witnesses which you choose to have called and examined on your part?

Prisoner. Yes, my lord, I have something to say for myself, and some witnesses to call.

PRISONER'S DEFENCE.

My lord, and gentlemen of the jury; permit me to implore your patient and serious attention, while I defend myself against a charge, which I am called upon to defend with my life. The humanity of the law presumes every man to be innocent, and the good sense of the jury will suppose there must be some adequate inducement for the commission of a crime; when you consider that my profession supports me in affluence, and that my character has been irreproachable, I trust you will expect the clearest and most decisive testimony in support of so atrocious and so incredible a charge, as having incited and abetted the mob in the destruction of lord Mansfield's property. I defy my bitterest enemy, I call upon the most profligate of my accusers, to assign a reason for such conduct! Will you then, my lord and gentlemen of the jury, suppose, that I, who have lived hitherto neither accused nor suspected of any criminal

or even dishonest action, should associate with boys, pickpockets, and the lowest dregs of the people, and in the face of my neighbours and acquaintance, in a place where I am particularly and almost universally known, that I should without any possible motive, be guilty of so horrid a crime, although not one of these neighbours appear against me; on the contrary, I shall produce many of them, who are house-keepers, and persons of good credit, whose testimony will flatly contradict the evidence given by the witnesses for the prosecution.

It is extraordinary that from the 7th to the 17th of June, Mr. Ingram should have concealed my supposed guilt, which it was so much his interest to have discovered; and that ten days should have elapsed before he gave his information. God forbid that I should insinuate that the reward of 50*l.* could have any influence on the evidence of any honest man however poor, however distressed; but when infamy is united with poverty, such a sum carries with it irresistible temptation. It is to me a painful task to expose the characters of these witnesses, though they have been unfeeling enough to attack upon false grounds, not only my character but my life. In justice, therefore, to my other witnesses, and to relieve you from any difficulty in determining to whom you should give credit, I ought and doubt not to be able by good evidence to prove, that the witnesses for the prosecution are worthy of no credit. I will shew you by the most undeniable testimony, that Ingram has been a bankrupt, that he has been discharged by an act of insolvency, that he is now insolvent, and that his word and his conduct are as exceptionable as his credit. It is very singular that Molloy, who was with Ingram the whole time, is not called by the prosecutors as a witness against me, though his evidence would be so material in the support of Mr. Ingram, especially as he attended at the justices, when the information was laid against me, and at my examination, besides his name being on the back of the indictment.

In respect to sir Thomas Mills, though the distress of his circumstances may not be inferior to Ingram's, yet I mean not to insinuate that any reward would influence his testimony, but he may perhaps conceive that his zeal will be the best proof of his attachment and the best road to his preferment. It is possible that his wishes may have led him into error, that he really believes me to be the person, whom he has mistaken for another. Sir Thomas Mills well knows, that this is not the first time in which he has unfortunately been mistaken upon his oath, to say no worse of it; for I have now in my hands an affidavit of his which was positively contradicted by five witnesses upon oath, and who are now attending to contradict him again.

Court. I am sorry, in the situation you

stand in, to interrupt you; it is indeed very painful to me, but as what you offer cannot be admitted in evidence, it is my duty not to permit you to state it. I am very sorry to be obliged to interrupt you.

Prisoner. I, with the greatest submission, hear and attend to what your lordship is pleased to give me in instruction; but when my life is at stake, and I have now an affidavit of that gentleman's in my pocket, contradicted by five positive witnesses, three of whom are now attending, I trust your lordship will permit that to be given in evidence.

Court. I am sure you would not, upon recollection, wish your acquittal should be attended with the admission of improper evidence.

Prisoner. Reflect for a moment on the improbability of the charge; recollect the character of the persons whose interest it is to prove it, and consider the degree of folly imputed to me by it, and then let me ask you whether in your consciences you believe me guilty: I speak with boldness, for I am armed with innocence. I dare therefore speak the language of truth; happily for me, providentially I may say, for the Almighty still protects the innocent, I can produce my servants and my neighbours, to prove that I was in my own house in Oxford-street, when I first heard of the fire, with my nightcap and slippers on; that I expressed much concern at it; that it was near one o'clock when I left my house; that in coming into Bloomsbury-square, for I admit I was there, I met with two acquaintances, with, or near, whom I stood about an hour close to the duke of Bedford's gate: I continued a quiet and peaceable spectator during all the time I staid there; and so far from stimulating the mob, I declare solemnly I frequently lamented the mischief they were doing; this I can prove by several housekeepers and other persons of credit, who, thank God, accidentally happened to be there, and saw me at different periods till I returned home. I shall likewise call other witnesses of equal credit, who know me, to prove that they, from their situation near lord Mansfield's house, and the notice they took of the rioters, must have observed me if that, which is imputed to me, had been true; but that on the contrary they did not even see me, it was indeed impossible they should; for I was at a distance from the house, and from every person who was in the least concerned in the outrages committing there. On my return home, between two and three o'clock, my servants will testify I spoke of the mob with horror, and of the mischief they had done with unfeigned concern. When you have heard all this evidence, I am confident you will not believe that I am guilty of this horrid offence; you will not withhold your credit to the great number of witnesses, all of unblemished characters, and most of them housekeepers living in the neighbourhood, and who can have no other interest in the

event of this business than the heartfelt satisfaction of protecting innocence from that punishment which guilt alone deserves, and you will not, in preference to them, implicitly believe witnesses whose characters are exceedingly suspicious, and whose testimony is interested. Forgive me, my lord, and gentlemen, if I detain you for a moment longer, but my anxiety, my lord, to vindicate my injured reputation induces me to trouble you with some witnesses who will tell you who and what I am; who have known me for many years, who have honoured me with their friendship, and who, I trust, will declare I have not disgraced that friendship. To them I beg leave to appeal for the integrity of my heart and the uprightness of my conduct; to you, gentlemen, I most cheerfully submit my fortune, my character, and my life; and I do not entertain a doubt but that your verdict will give perfect satisfaction to every man who is not interested in my death.

——— *Evans sworn.*

You are a servant, I believe, of Mr. Maskall?—Yes.

Do you remember the evening of the fire at lord Mansfield's the 6th of June?—Yes.

Was your master at home that evening?—He was till half past twelve o'clock.

At that time how was he dressed, as a man going out or going to bed?—I had fetched my master's slippers and night-cap for him to go to bed.

How happened it he did not go to bed?—I went into the street, enquiring where those fires were? They told me at lord Mansfield's. I ran in and told my master that lord Mansfield's house was on fire.

Where does your master live?—In Oxford-street, No. 57.

What part of Oxford-street is it?—Two doors from Berner's-street.

What time will it take to walk from your master's to Bloomsbury-square; did you ever happen to walk that way?—No, therefore I cannot say; but I imagine my master could not be above twenty minutes. I told my master I heard lord Mansfield's house was on fire; his answer was 'God forbid!' He ran out into the street and desired me to fetch him his great coat, for, he said, he had an acquaintance in Russell-street, and he would see if all was safe.

Was any one in the house at the time this conversation passed between you and your master?—No; they were all at the door.

Who?—Mr. Nichols and William Ellis were at the door.

Are those servants in your house?—The journeyman is Mr. Nichols, the porter is William Ellis.

Were any of your neighbours in the street at that time, that you knew, who spoke to your master?—Yes.

Who were they?—Mrs. Sawyer was at her door; she lives next door to my master.

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Did you see Mrs. Simpson and Mrs. Hough and her daughter?—Yes; they came up to soon after.

Did they pass, or converse with your master before they came up to you?—They told me they did.

At that time was your master gone?—He was.

At what time did your master leave his house?—As near as I can guess, about half past twelve o'clock.

Can you tell when he returned again to his house?—At half past two; the watch were going half past two as I stood upon the stairs with a candle to light my master to bed.

Were the journeyman and porter at home when he came home?—They were just gone to bed; but the porter got out of bed to open the door, and he let my master in.

Did your master tell you when he came home whether there had been a fire at lord Mansfield's, or what he had seen?—I asked my master; he said yes, "it was the horriddest sight he had ever seen in his life, and the most awfullest thing he ever met with, and it chilled his blood in him."

Cross-examination.

You are a servant maid?—Yes.

He went out in a great hurry?—Yes.

Had he his slippers on?—No. He was unbuckling his shoes; he buckled them again and went out immediately.

Did he take up any hat that was in the way?—He sent me for his great coat and his hat.

The hat had no cockade in it?—I saw none.

It had no cockade in it when it came home?—I believe he left it upon the counter when he came in, I did not see it.

He was not called up again that night, was he?—He was about five o'clock, as near as I can guess.

Did he tell you what they had done at lord Mansfield's that shocked him so much?—He said 'they had burnt very fine furniture.'

Did he tell you any thing else?—No, nothing more.

Matthew Wood sworn.

What trade are you?—A coachmaker.

Where do you live?—In Dean-street, Oxford-road.

Do you remember seeing any thing of Mr. Maskall on the Tuesday when the fire happened at lord Mansfield's?—Yes, I do.

What passed between you and Mr. Maskall at that time?—When I went to the fire it might be about half after one; I stopped there about ten minutes.

Where did you first see Mr. Maskall?—At about twelve at night at his own house; he came out and said, "Wood, where do you think the fire is?" I said, "Sir, some say it

is at lord Mansfield's, and' some say it is at a school." Said he, "Evans, get me my great coat, and I will go and see where it is." He went directly; in about a quarter of an hour after, or it might be more, his shopman and I went there. When we came to Russell-street, I saw no disturbance in the least. When I came back to Great Russell-street, I saw a fire in the square. There was a fire at a school, I think it is in Little Russell-street.

Whereabouts in Little Russell-street?—Upon the right hand of Great Russell-street, going from Tottenham Court-road into the square. Coming into Great Russell-street I saw a fire in the square. I said to Mr. Nichols, let us go and see whether this fire is at lord Mansfield's. We went into the square. I went within the iron rails, the gate was open, and I walked there; I might stop there about a quarter of an hour; I did not like to stay any longer for fear any lives might be lost. Coming home again, I walked by the duke of Bedford's dead wall; and just by the gate I saw Mr. Maskall talking with a gentleman and lady there.

What time was this?—It might be a quarter before two.

Where was it that Mr. Maskall was standing when you saw him?—There is a gate in the centre of the dead wall at the duke of Bedford's, it might be about half way from that dead wall, or not so much, to lord Mansfield's.

How long might you observe him in that situation?—I was with him about a quarter of an hour; I had my hand upon his shoulder while I was conversing with him.

And that, I think, you said was about a quarter before two?—It might be about two when I left him.

What was the behaviour and conduct of Mr. Maskall during all the time you was there?—Standing very quietly, as far as I saw; all his discourse was to this lady and gentleman.

Did you see him do any thing, any one act whatever, to encourage the mob?—No; very far from any such thing. I know Mr. Maskall extremely well.

Did you see him do any thing whatever to encourage them?—Not in the least.

If Mr. Maskall had done any thing to encourage the mob, should you have seen him?—Undoubtedly I should have taken notice of such a thing, if I had been by.

If any persons with flags had come up to him, should you have seen it?—Undoubtedly.

If any persons had come up to take directions from him, for any part of their conduct, or what they were to do, should not you have seen it?—I should.

Then no such thing passed, did it?—No such thing.

Did any thing drop from Mr. Maskall upon the occasion?—Nothing that I heard; I cannot pretend to say what the discourse was between this gentleman and lady and him; but

when I came home he said, "How do you, Wood?" that was all that passed. I was talking to the shopman about the disturbance that had happened.

Cross-Examination.

When you went away you left him there?—Yes. The watch was going past two when I got home.

John Cooper sworn.

Where do you live?—In Queen-street, Bloomsbury.

What are you?—A cheesemonger.

Did you happen to be in Bloomsbury-square the night of the fire at lord Mansfield's?—Yes.

In what part of the square were you?—About five yards from the duchess of Bedford's gate.

Were you there at one o'clock?—I believe I was, or a little after; it could not be more than a quarter after one when I came there.

How long did you stay there?—I was at my own house at ten minutes past two exactly.

From the time you came there to the time you went away from the square, did you continue in that place?—Within a few yards of it.

Did you see Mr. Maskall there?—Yes, I did; about five minutes after I came there.

How near did Mr. Maskall stand to you?—When I first saw him, he was standing close behind me.

What was his behaviour at that time?—Very quiet and very still.

Are you acquainted with Mr. Maskall?—I am through business.

You know his person perfectly well?—I do.

How long did you happen to keep your eye upon Mr. Maskall?—During the time I was there, I cannot say that I was ever three or four minutes without having my eye on him; about two minutes before I went away I did not see Mr. Maskall; he told me he was going home.

Do I understand you to say that during the whole time that you yourself staid, which was from very soon after one till near two or quite two o'clock, you had not Mr. Maskall out of your sight for above two or three minutes at a time?—No; I cannot think it was more, for whenever I looked I saw him.

And what was his behaviour?—Very quiet; as quiet as any spectator.

If he had behaved during any part of that time unlike a quiet inoffensive spectator must you have seen it?—I must.

Did you see any person during that time come up to him with any blue flag, or a flag of any kind?—No; I saw no flag.

Did you see Mr. Maskall speak to any persons that were active in the mob?—I did not.

Did you see any that were active in the mob address themselves to him?—No; I did not.

Did you see Mr. Maskall speak to any of the other spectators?—Yes. I saw him speak to different people at different times, but I was not near enough to over-hear the conversation.

But to none you heard him speak that were at all in the activity of the mob?—No; only to quiet spectators.

Did he speak to you?—He did.

Who was with you?—My wife.

Did he speak to both of you?—He did.

Where might the soldiers be at that time?—I cannot be particular to a few yards, but they were by the sides of the fires that were lighted.

Were the soldiers between the mob and you?—I was outside of the spectators.

What distance might Mr. Maskall be from you at the time you are now speaking of?—I suppose not more than five or six yards.

And you saw the whole tenor of his behaviour, during the time he was at the duke of Bedford's gate?—I did.

At what time did you first speak to him?—It could not be more than a quarter past one. I said what shocking work this is; in about half a minute something was thrown out at the window. Mr. Maskall held up his hands, and said, "Good God! how shocking it is to see all this fine furniture destroyed."

Were they creditable inoffensive looking people that you saw him speak to?—They were.

Then upon the whole was the tenor of Mr. Maskall's behaviour during all that time that you saw him, just the same as your own, your wife's, and every other person you saw there that was inoffensive?—It was.

What time was it that Mr. Maskall told you he was going home?—I think it was about two o'clock.

You think you must have seen if there was any thing improper in Mr. Maskall's conduct during that time?—I think I must if any thing had happened like it.

Cross-Examination.

Did you go there out of curiosity?—We heard there was a fire near our house, we could not go to bed we were so frightened, therefore I went to see where it was.

Did any body go with you, besides Mrs. Cooper?—No.

The first place where you saw Mr. Maskall was near the front gate of the duchess of Bedford's?—Yes.

Nearer to the gate or lord Mansfield's?—Nearer to lord Mansfield's.

You turned yourself towards lord Mansfield's house?—Yes.

And kept fixing your attention to what passed there?—Yes.

Did you change your place during the time you staid?—Not perhaps above two or three yards backwards and forwards upon that spot.

Mr. Maskall was, you said, behind you at first?—He was.

Did you converse with any body besides Mr. Maskall?—No.

Was there any other person that you knew there that you recollect?—Not any.

Did he keep behind you all the time?—No; he was sometimes a few yards one way or the other, my eye was generally upon him; there were not above two or three minutes, to my knowledge, that I did not see him.

How many times did you speak to him while you staid there?—I do not recollect how many, but what passed there was lamenting the destruction of the furniture and such things as that.

Did you leave Mr. Maskall there?—He said he was going home about five minutes before we came away.

Will you swear that he went away before you?—He went past us and turned up, as if going to Great Russell-street; when he came by he said, I think, 'I will go home,' and I never saw him any more; we staid about five minutes after that.

Which Great Russell-street do you mean?—He turned up towards the Museum.

That is the way to Oxford-street, to his own house?—It is.

Susannah Cooper sworn.

Mr. Cooper is, I think, your husband?—He is.

Do you remember at what time in the night it was when your husband and you first went into Bloomsbury-square?—It was one o'clock or a little after, to the best of my knowledge.

Did you see Mr. Maskall there?—I saw him there.

Was it soon after you came into the square that you saw him there?—To the best of my knowledge, it was about five minutes after.

What part of the square were you in at the time you first saw Mr. Maskall?—By the duchess of Bedford's wall near to the gate.

Was it between the gate and lord Mansfield's house?—Yes.

Are you acquainted with Mr. Maskall?—I saw him once before that evening.

Mr. Maskall dealt with your husband?—Yes. Mr. Maskall once called at our shop and paid a bill.

Did you hold any conversation with Mr. Maskall?—I do not recollect any conversation; he asked us how we did? we asked him how he did; he joined with us in lamenting the loss of such fine furniture. The particular expressions I do not remember.

I only wish to know how long you and Mr. Cooper continued with Mr. Maskall, or how long you had him within your eye?—It was ten minutes past two when we got home.

How long do you think you were walking

from Bloomsbury-square to your own house?—A few minutes.

Had Mr. Maskall left you before you proceeded to go home, or did you leave Mr. Maskall there?—Mr. Maskall left us.

How long had Mr. Maskall quitted you before you left the square?—About five minutes.

Then I suppose it might be about two o'clock when Mr. Maskall left you?—I believe it was.

Which way did he go when he left you?—He went up towards Great Russell-street leading to Tottenham Court-road.

Had Mr. Maskall been frequently in your eye, from the time he first asked you how you did, and lamented the fine furniture that had been destroyed, till he said he was going home and left you?—Frequently in my eye.

Was he very near you?—Sometimes very near.

Did you ever see him at any great distance?—No.

Was he ever at such a distance but you could observe him talking to people, and who they were?—I observed his speaking to several of the spectators.

Were they people of credit in their appearance?—They were.

During the course of that hour did you see him speaking to any of the mob?—I did not.

Did you see any man with a blue flag come up towards him?—I did not.

Or any number of persons that had the appearance of the mob?—I did not.

Did you see him take any active part whatever during the time you were there?—Not in the least.

Did you hear him utter an expression that conveyed a wish that the mob should do the mischief they did?—Not in the least.

Was the whole of his conduct and conversation as quiet and peaceable as your own?—As much so.

Cross-Examination.

If I understand you, very little conversation passed between your husband, you, and Mr. Maskall?—Very trifling.

You did not hear what the nature of his conversation was with other people?—I did not.

About what distance do you think he might be from you?—Three or four yards, perhaps; sometimes five or six.

There was nothing particular in Mr. Maskall's conduct that called for any particular attention from you to it?—Nothing at all.

I presume your attention was chiefly taken up by seeing the dreadful work that was going on?—Yes, I did attend to that.

Did you see so much of him as to be able to form a judgment of his conduct during the whole time?—I think I did.

John Robinson sworn.

Do you remember the fire that happened

at lord Mansfield's upon Tuesday the 6th of June?—I remember the goods being burnt.

You are, an attorney?—I am with Messrs. Bateman and Barnard in Maiden-lane.

Did you happen to be present in Bloomsbury-square during any part of the business?—I was present.

Do you recollect about what time it was that you were present?—I believe about a quarter after one o'clock in the morning.

What part of the square was it you stood in?—Near to the gates of the duke of Bedford; I stood between them and lord Mansfield's house, but rather nearer to the gates than lord Mansfield's house: after I had been there a little while, I spied Mr. Maskall very near to me, within a yard, I believe, of me; I had a gentleman with me; and I said, 'there is the pedantic Maskall,' or 'there is Mr. Maskall.'

How long did you observe Mr. Maskall there, or did you continue there?—I think I was there about an hour.

Did you make any observation of Mr. Maskall being near you, or where he was during the time of your being there?—I frequently, at various times, saw him about that spot where I first saw him; I did not speak to him, not having any acquaintance with him.

Did you frequently, or only now and then, make any observation of Mr. Maskall's behaviour and conduct?—I did observe him two or three times, but not to notice any thing particular about him. I did not observe that he was any way riotous, or concerned about the riot. I did not observe any body come to him, or he speak to any body, or go near to the fire or the rioters, and I well remember seeing him frequently during that hour.

That was his conduct during all that time?—During all the time I saw him. I have well recollected myself. I came here last Thursday entirely unsolicited to give evidence on his behalf, having heard he was taken up upon this business of lord Mansfield's, and being conscious he had nothing more to do with it than I had as a tame spectator.

Court. How long did you say you might be there?—About an hour.

Were you at this fire in Bloomsbury-square?—I was.

At what time did you go there?—Before ever the doors were broke open, I believe it might be a little before one o'clock.

How long did you remain there?—I suppose till near five o'clock.

Do you know Mr. Maskall?—Very well.

What part of the square were you in?—I went up to the captain of the guard to get him to draw the soldiers round the house. I went into the house with Mr. Dowse, one of lord Mansfield's officers. I saw people plundering and pulling things to pieces. I went about again, and saw people pulling things about. I went into the thickest of the mob, and was about for some hours, and I did not see Mr. Maskall at all.

You went into the house for the purpose of giving assistance?—I did. I have a house near lord Mansfield's.

Were you upon the steps, or in the street about the house between one and two?—I was in the street at that time.

Did you see Mr. Maskall there?—I did not.

Did you see the mob in general?—Yes, and several people whom I recollect that were very active in the business.

If Mr. Maskall had been there, and been active, do you think you should have seen him?—Undoubtedly I should, and must have known him, from the number of years I have known him. I left the place just before the soldiers fired upon the mob.

William Mace sworn.

What are you?—A carpenter.

Do you happen to know Mr. Maskall?—I have known him about three years.

Were you at any time at lord Mansfield's house?—I was, about twelve o'clock.

You were there quite at the beginning?—I was.

How long did you stay there?—Till near three in the morning.

Can you recollect where you were, between one and two o'clock?—Standing at the end of the duke of Bedford's wall, at the watch-box, almost opposite lord Mansfield's house.

For how long a time were you on that spot?—I believe I might be there till two o'clock.

During that time had you your eye towards lord Mansfield's door?—I had.

During that time did you see Mr. Maskall?—I did not.

Mr. Maskall having been known to you for three years, if he had been before the door was it likely or probable that you should have seen him?—Yes, if he had been before the door or upon the steps I must have seen him.

Did you see any people upon the steps?—Yes, I might tell 20, and they were chiefly boys.

And you are clear you never saw Mr. Maskall during that time?—I did not.

Did you see any books and parchments brought out of the house to be burnt?—I did not take any particular notice of what the things were which were brought out; a great many things were brought out.

When you were going towards home did you see Mr. Maskall?—I went up to the side of the duke of Bedford's wall, and went towards the west side of the square, and at the end of Great Russell-street, that leads into the square, there I saw Mr. Maskall stand by himself; some new buildings have been erected there; he stood up close to the buildings, that was the first time I saw him; I asked him how he did? He said, "He had staid about the square till he was cold, and he was going home to bed." He bid me good night; I bid him the same. I saw him go up the street, I believe forty yards before me.

I turned; then I went down the west side of the square, and went home.

Do you know that fellow Ingram?—I do not.

You say you saw Mr. Maskall walk up Russell-street 40 or 50 yards?—I did, and he told me he had staid till he was cold, so help me God.

Cross-Examination.

What time was this?—Between two and three o'clock.

How near to three?—I do not believe it was quite three; it was at the breaking of the day. I did not look at my watch.

I am desired to ask you whether you saw any one join Mr. Maskall as he walked down Great Russell-street?—No, nobody; nor was there any body with him when I saw him.

George Richardson sworn.

Where do you live?—In Bloomsbury.

Whereabouts?—In Swan-passage.

What are you?—A coach-carver.

Did you happen to be in Bloomsbury-square at the time of the riot?—I was.

At what time did you first go there?—I believe between twelve and one. I was there before the door was broke open.

When did you first see Mr. Maskall?—I did not see him at all.

Where were you?—I assisted one of my lord's servants in getting some of his things out of the house.

Were you in the house during the time of the riot?—Several times.

Did you observe any of the mob carrying any of the things out of the house?—I did.

Do you know Mr. Maskall?—I do.

You know his person perfectly well?—I do.

If Mr. Maskall was encouraging or doing any acts to abet the mob, do you think you should have seen him?—I must have seen him.

Did you see any parchments or books burnt?—I remember a vast number of different articles set on fire. I do not remember in particular any books.

Do you remember any particular observation you made between one and two?—I was there till between four and five in the morning.

Then you did not see Mr. Maskall do any one thing?—I did not see him at all.

If he had been upon the steps as you passed the house, must not you have seen him?—I am confident, if he had been there, I must have seen him.

Cross-Examination.

Were you carrying things out at the same time that the mob was carrying things out?—Yes.

Where did you carry them to?—I went up the area stairs with the servant Grove.

That is a different flight of stairs from that which the mob went up?—Yes.

It comes into the street?—Yes.

Then you must have seen people that were upon the steps?—Yes, I went in that way myself.

Sarah Simpson sworn.

Do you remember seeing Mr. Maskall on the Tuesday night?—Yes.

Where did you see him?—Between New-man-street and Berners-street, near his own house.

At what hour?—Between twelve and one; I asked him whether he was going to see the fire? He said, "Yes, he heard lord Mansfield's house was attempted, but he hoped in God Almighty that it was not true."

Had you any further conversation with him?—No, he bid me good night, and went away.

Rev. Mr. Thomas Fisher sworn.

Are you so fortunate as to know Mr. Ingram?—I am.

Counsel for the Crown. Is that a proper way of putting the question?

Counsel for the Prisoner. Do you know Mr. Ingram?—A. I do.

What is he?—He was a doctor in physic.

What is he now?—I do not know.

Have you any reason to know any thing of his character?—Yes.

Is he to be confided in?—People think there is a hazard in that, and I think so.

What do you mean by there being a hazard?—Because he might deceive them perhaps.

I am asking you a general question; what was his character in the neighbourhood where you and he lived?—As a man who would take people in, as they call it, if they had any dealings with him.

Court. It is a plain question you are asked; you reason about it, instead of giving an answer; you say he might deceive, to be sure he might, so might any body; your answer must be more decisive.

Counsel for the Prisoner. Was he a man that was believed as well as his neighbours?—A. No.

Would you believe him as far as your other neighbours?—No, far from it; perhaps he might not always deceive me.

Court. Would you believe him upon his oath? That is the question which is always asked when you impeach a man's testimony; do you think he is to be believed upon his oath?—A. He is the last man I know that I would believe, even upon his oath.

Then you mean to say that you would not believe him?—He is the last man that I would believe.

Court. That imports that you would believe him. You know he has been called here to give his testimony, which testimony he has given upon his oath; you are called upon your oath to discredit his veracity, and to say, that he, in your belief, ought not to

receive credit upon his oath.—A. I would not believe him upon his oath.

Cross-Examination.

Where do you live?—At Richmond.

Where did you live before?—At Kensington.

You are the clergyman perhaps of that parish?—Not of that parish, I live there.

What, do you keep a school there?—No.

You have no connection with the parish?—None.

You have no particular connection with Mr. Ingram, perhaps?—No, not now.

You can only speak to the general character of a person here; is it your meaning, that let him swear what he may, you would not believe him upon his oath?—I mean so.

Have you any connection with any parish, or any parochial duty?—Yes, at Malden, near Kingston.

Are you a vicar or curate?—A curate.

To whom?—Mr. Bean of Malden.

That is all your duty?—It is.

William Richardson sworn.

What are you?—A printer.

Do you happen to know Mr. Richard Ingram?—I have some slight knowledge of him; I cannot speak any thing respecting him particularly of my own knowledge, I can from general report.

Do you know any thing of his general character?—His general character is that of an abominable liar.

Do you know any thing more of him?—I have been in several companies where he has been mentioned, and whenever his name was mentioned, he was generally known by the appellation of Lying Dick; he was as well known by that appellation as Richard Ingram.

From the knowledge you have of the general character he bears, is he a man that you would believe upon his oath?—Upon my oath, I would not believe him upon his oath.

William Price sworn.

Do you know any thing of this Richard Ingram?—I know him very well.

What are you?—An attorney.

What character does he bear?—There is a diversity of opinions respecting him; some give him a good character, and some a very indifferent one.

Which is the most prevalent of the two?—I hear that he is a most notorious liar.

What is his most general character?—I have heard that character of him, that he is a liar.

Is the opinion more general of his being a liar than otherwise?—I have heard them that know him a good deal say so.

Have you had any conversation with Mr. Ingram relative to this business?—I have; I happened to be at the London coffee house; I think I turned in for the purpose of reading

the dispatches that were received from sir Henry Clinton; I think it was on the 16th, though I will not be particular to the day; whilst I was there Dr. Ingram came in, and after some little conversation, he said lord Mansfield writes a very plain hand, or a good hand, words to that import; he then had some letters in his hand; upon which he delivered me over a note from lord Mansfield, as he said. He asked me if I knew lord Mansfield's hand? I said I had been in possession of his name, and I believed that to be his lordship's hand-writing; it was a complimentary card from lord Mansfield to him; I think lord Mansfield was then sitting at Guildhall; the import of the card I do not remember particularly, but I think it was, "Lord Mansfield sends compliments to Dr. Ingram, he is much obliged for some information, and probably he might hear from him;" something of that import. He also produced another letter, which he said was the hand-writing of lord Stormont; and further he said he had breakfasted that morning with lord Stormont, or was to breakfast with him. I then congratulated him on having an interview with such great personages. I told him that I hoped he would be provided for; in answer to which he said he was provided for. My curiosity did not lead me to inspect the letters he said he received from lord Stormont.

What passed else?—That is all I know of the business.

What did you understand from Mr. Ingram, when he said he was provided for?—I understood he was provided for in the way of his profession. I have not the least idea of the circumstances.

Did he say any thing more than you have mentioned?—Not a syllable more.

Would you believe Mr. Ingram upon his oath?—I would believe him as soon as any man in the kingdom upon his oath; I have indeed heard the character of him which I mentioned, but I would believe him.

Counsel for the Crown. Mr. Ingram, I wish you would explain this conversation about the note you had from lord Mansfield.

Ingram. Here is a letter I received from lord Mansfield, in consequence of a letter I wrote to his lordship.

Relative to this subject was it?—I wrote a long letter on the Thursday.

Is that the letter you wrote to lord Mansfield, in consequence of which you received that note in answer?—It is. "Lord Mansfield sends his compliments to Mr. Ingram, and returns him many thanks for his letter, he will probably hear of it."

Richard Shearsmith sworn.

What are you?—A perriwig-maker.

How long have you known Mr. Ingram?—Thirteen or fourteen years.

What is his general character?—His gene-

ral character has been, that he is a man rather than that would romance.

Is that his general character?—Yes, it is.

Is he a man that you would believe now upon his oath?—No, I would not.

Upon your oath you would not?—Upon my oath I would not.

And you have known him thirteen or fourteen years?—Yes, or thereabouts.

Cross-Examination.

What, do you think he would romance upon his oath?—I cannot say about that any more than what hearsay is.

He is called a man given to romance?—Yes, much so.

George Furnace sworn.

Do you know Richard Ingram?—I do.

What are you?—A publican.

How long have you known him?—These three years.

What is his character?—He lodged and boarded with me all last winter from August till March.

What do you know of his character?—I know he eat and drank my property, and did not pay me any thing.

What is his general character?—Not to pay any debts he contracts.

Court. You are not called here to speak to any particular parts of his conduct, or to any other part of his character, but that of veracity. What is his character with respect to veracity?—*A.* He gave me a note here for payment of money.

Court. You were told you was called here only to speak to his veracity?—*A.* He told me a great many falsehoods, that he had something to receive at the War-office; when I came to examine, he had nothing.

Do you think him a man to be believed?—No, I do not, he has told me so many falsehoods.

Is he a man you would believe upon any occasion?—No, I would not, he has deceived me so often.

Is he a man that you would believe upon his oath?—No, he has deceived me upon his word so often, that I would not believe him upon his oath.

Atkinson Bush, esq. sworn.

What evidence, Sir, are you come to give?—Between the prisoner and Mr. Ingram, respecting his veracity.

Did you know any thing of his credit?—I know nothing of his credit, but much of his discredit.

Where do you live?—In Great Ormond-street. I have known him 30 years.

During that time has he been a man of a fair and good character, or not?—When I went to school with him he was known by the same appellation by which he has now been described, that of Lying Dick.

Has he deserved that name from his infancy even until now?—From the time I have known him, from the general character he bears, he has.

You think he still deserves that appellation?—That was his character at school, and from that character I have never been intimate with him since; that is the character he has now at the coffee-house I frequent, the Ormond-street coffee-house.

One of the Jury. Pray, Sir, what are you?—*A.* I believe one among the jury can inform the rest.

Is he a man that you would believe upon his oath?—No, I say so upon my oath, and I believe the Solicitor General, and many more here, will believe me upon my oath.

Ingram. I am in a disagreeable situation, my character has been attacked here; there is not a debt I owe which I have not written down, and have not delivered in to the solicitor in this cause, knowing such an attack

would be made upon my character; every circumstance of my life, from my first setting out, I have put down the general heads of; and some general officers, the first officers in the army, have promised to be here, because I was told that such an attack would be made upon my character, and that my debts and misfortunes in the world would come out in court. I appeal if I did not make the remark myself, and desire that such an appeal might be made to gentlemen, as to my character.

[Several witnesses were called, none of whom appeared.]

Counsel for the Prisoner. Mr. Maskall opened in his defence, that he would call some witnesses to his character; if he will be determined by me, I think it quite unnecessary.

Verdict, Not Guilty.

Tried before the Lord Chief Baron Skynner.

564. The Trial* of FRANCIS HENRY DE LA MOTTE, for High Treason: Before the Right Hon. Sir Watkin Lewes, knt. Lord Mayor of the City of London; the Hon. Francis Buller, esq. one of the Justices of his Majesty's Court of King's-Bench; the Hon. John Heath, esq. one of the Justices of his Majesty's Court of Common Pleas; James Adair, Serjeant at Law, Recorder; and others his Majesty's Justices of Oyer and Terminer of the City of London, and Justices of Gaol Delivery of Newgate, holden for the said City and County of Middlesex; July 14: 21 GEORGE III. A. D. 1781.

"Middlesex. BE it remembered, That at the general session of Oyer and Terminer of our lord the king, holden for the county of Middlesex, at Hicks's-hall in St. John's-street in the said county, on Tuesday the 24th day of April, in the 21st year of the reign of our sovereign lord George the 3rd, king of Great Britain, &c. before William Mainwaring, esq. the rev. sir George Booth, bt. George Mercer, David Walker, esqrs. and others their fellows, justices of our said lord the king, assigned by his majesty's letters patent under the great seal of Great Britain, directed to the same justices before named, and others in the said letters named, to enquire more fully the truth by the oath of good and lawful men of the said county of Middlesex, and by other ways, means, and methods, by which they shall or may better know (as well within liberties as without) by whom the truth of the matter may be better known, of all treasons, mis-

prisions of treason, insurrections, rebellions, counterfeitings, clippings, washings, false coinings, and other falsities of the money of Great Britain and other kingdoms or dominions whatsoever; and all murders, felonies, manslaughters, killings, burglaries, rapes of women, unlawful meetings, conventicles, unlawful uttering of words, assemblies, conspirations, confederacies, false allegations, trespasses, riots, routs, retentions, escapes, contempts, falsities, negligences, concealments, maintenances, oppressions, champarties, deceits, and all other evil doings, offences, and injuries whatsoever, and also the accessories of them, within the county aforesaid (as well within liberties as without) by whomsoever and in what manner soever done, committed, or perpetrated, and by whom or to whom, when, how, and after what manner; and of all other articles and circumstances concerning the premises, and every of them or any of them in any manner whatsoever; and the said treasons, and other the premises, to hear

* Taken in Short-hand by Joseph Gurney.

and determine according to the laws and customs of England, by the oath of John Tilney, Miles Dent, John Thomas, John Dawson, James Smith, Richard Snow, Joseph Cary, John Tayler, John Clark, Thomas McCarty, Isaac Watson, William Cock, Richard Stapleton, Timothy Tomlins, and Joseph Muskett, good and lawful men of the county aforesaid, now here sworn and charged to inquire for our said lord the king for the body of the same county. It is presented in manner and form following (that is to say):

“*Middlesex.* The jurors for our sovereign lord the king, upon their oath, present, that an open and public war, on the 11th day of January, in the 20th year of the reign of our sovereign lord George the 3rd, by the grace of God, of Great Britain, France, and Ireland, king, defender of the faith, and so forth, and long before and ever since hitherto by land and by sea was, and yet is carried on and prosecuted by Lewis the French king against our most serene, illustrious, and excellent prince, our said lord the now king; and that one Francis Henry De la Motte, late of the parish of St. George, Hanover-square, in the county of Middlesex, gentleman, a subject of our said lord the king, of his kingdom of Great Britain, well knowing the premises, not having the fear of God in his heart, nor weighing the duty of his allegiance, but being moved and seduced by the instigation of the devil, as a false traitor against our said most serene, illustrious, and excellent prince George the 3rd, now king of Great Britain, and so forth; and contriving, and with all his strength intending, the peace and common tranquillity of this kingdom of Great Britain to disquiet, molest, and disturb, and the government of our said present sovereign lord the king of this kingdom of Great Britain, to change, subvert, and alter; and our said lord the king from the royal state, title, honour, power, imperial crown and government of this his kingdom of Great Britain, to depose and deprive; and our said lord the present king to death and final destruction to bring and put, and the faithful subjects of our said lord the king, and the freemen of this kingdom, to bring into the most miserable servitude and slavery under the said French king; he, the said Francis Henry De la Motte, on the said 11th day of January, in the said 20th year of the reign of our said lord the king, and on divers other days and times, as well before as after that day, with force and arms, at the said parish of St. George, Hanover-square, in the said county of Middlesex, falsely, wickedly, and traitorously did compass, imagine, and intend our said present sovereign lord the king, of and from the royal state, crown, title, power, and government of this realm of Great Britain, to depose and wholly deprive, and the same lord the king to kill, and bring and put to death: and to fulfil, perfect, and bring to effect, his said most evil and wicked treason, compassings, and imaginations aforesaid, he

the said Francis Henry De la Motte, as such false traitor, during the war aforesaid, to wit, on the said 11th day of January, in the 20th year aforesaid, at the parish aforesaid, in the county of Middlesex aforesaid, falsely, wickedly, and traitorously, did compose and write, and cause to be composed and wrote, divers letters and instructions in writing, to shew and inform the said French king and his subjects, then and yet enemies of our said present sovereign lord the king, of the state, condition, and force, of several of the ships of war of our said lord the king, and the number of the ships and forces of our said lord the king, then and there designed and prepared for the defence of this kingdom, and the enemies of the said kingdom to attack, repel, and resist; and how some of the ships of war of our said lord the king were manned, and for what time divers ships of war of our said lord the king were furnished with provisions, and of the stations of divers squadrons of ships of war of our said lord the king, employed in prosecuting and carrying on the said war; and the names of the commanders of such squadrons, and the number and force of the ships of war of which such squadrons consisted; and also of the service in which divers other ships of war of our said lord the king were then employed in prosecuting and carrying on the said war; and also the number and force of the ships of war of our said lord the king, within certain ports of this kingdom, and of the state and condition of several of the said ships; and of the numbers of the land forces of our said lord the king, in this kingdom and the dominions thereunto belonging; and of the times of the sailing of divers ships of war of our said lord the king, and the destination of the said ships, and the services in which such ships were employed; and of the times when other ships of war of our said lord the king were then expected to sail from this kingdom, and the voyages, cruizes, and services, upon which such ships were sailed; and also of the times when other ships of war of our said lord the king, employed in the prosecution and carrying on of the said war, were expected to arrive in this kingdom; and also of the times of the sailing of several ships and vessels belonging to divers subjects of our said lord the king, from this kingdom to the dominions of our said lord the king, and other places, in parts beyond the seas; and also of the times when other ships and vessels, belonging to divers other subjects of our said lord the king, were expected to sail from this kingdom to the dominions of our said lord the king, and other places, in parts beyond the seas; and also of the times when other ships and vessels, of divers other subjects of our said lord the king, were expected to arrive in this kingdom from the dominions of our said lord the king, and other places, beyond the seas: and that afterwards, and during the said war, to wit, on the said 11th day of January, in the 20th year

aforesaid, at the parish aforesaid, in the county of Middlesex aforesaid, he, the said Francis Henry De la Motte, as such false traitor as aforesaid, in prosecution of his said treason and treasonable purposes aforesaid, falsely, wickedly, and traitorously composed and wrote, and caused and procured to be composed and wrote, a certain letter to be sent to certain subjects of the said French king, in parts beyond the seas, then and yet enemies of our said lord the king; in which said letter the said Francis Henry De la Motte, among other things, wickedly, falsely, and traitorously notified, disclosed, and revealed to the said enemies of our said lord the king, that certain regiments of the army of our said lord the king were preparing to go to the West-Indies; and also of the number of land forces of our said lord the king to be sent to North America and Canada; and of the stations of divers ships of war of our said lord the king, then employed in prosecuting and carrying on the said war of our said lord the king against the said Lewis the French king: and afterwards, and during the said war, to wit, on the 30th day of June, in the 20th year aforesaid, at the parish aforesaid, in the county of Middlesex aforesaid, he the said Francis Henry De la Motte, as such false traitor as aforesaid, in prosecution of his said treason and treasonable purposes aforesaid, falsely, wickedly, and traitorously composed and wrote, and caused and procured to be composed and wrote, a certain other letter, to be sent to certain subjects of the said French king, in parts beyond the seas, then and yet enemies of our said lord the king; in which said last-mentioned letter, the said Francis Henry De la Motte (among other things) wickedly, falsely, and traitorously notified, disclosed, and revealed to the said enemies of our said lord the king, that sir George Brydges Rodney, bart. then being one of the admirals of our said lord the king, was at the island of Barbadoes, in parts beyond the seas, with 14 ships of war of our said lord the king, part of a squadron of ships of war of our said lord the king, employed in prosecuting and carrying on the said war, under the command of the said sir George Brydges Rodney, being such admiral as aforesaid; and that seven other ships of war of our said lord the king, other part of the said squadron, kept at sea; and that other ships of war of our said lord the king, other part of the said squadron, were under repair at St. Lucia, in parts beyond the seas: and also that Francis Geary, esq. then being one other of the admirals of our said lord the king, was cruising, with a squadron of other ships of war of our said lord the king, between the Scilly islands and Ushant; and that certain ships and vessels were getting ready with provisions for the said squadron; and that a certain ship of war of our said lord the king, called the Marlborough, had sailed from Spithead, on Tuesday then last past, to join the said squadron; and that certain other ships of war of our said lord the king, em-

ployed in prosecuting and carrying on of the said war, were off Cherburgh, in the kingdom of France: and afterwards, and during the said war, to wit, on the 1st day of August, in the 20th year aforesaid, at the parish aforesaid, in the county of Middlesex aforesaid, he the said Francis Henry de la Motte, as such false traitor as aforesaid, in prosecution of his said treason and treasonable purposes aforesaid, falsely, wickedly, and traitorously composed and wrote, and caused and procured to be composed and wrote, certain accounts or lists, to be sent to certain subjects of the said French king, in parts beyond the seas, then and yet enemies of our said lord the king; in one of which said accounts or lists, the said Francis Henry de la Motte falsely, wickedly, and traitorously notified, disclosed, and revealed to the enemies of our said lord the king, the number, force and station of a certain squadron of ships of war of our said lord the king, then employed in prosecuting and carrying on the said war, under the command of the said Francis Geary, then being one of the admirals of our said lord the king; and in another of the said accounts or lists, the said Francis Henry de la Motte falsely, wickedly, and traitorously notified, disclosed, and revealed, to the said enemies of our said lord the king, the number, names, and force of certain ships of war of our said lord the king, then in certain ports of our said lord the king, in this kingdom; and the state and condition, and destination of the same ships of war: and in another of the said accounts or lists, he the said Francis Henry de la Motte falsely, wickedly, and traitorously notified, disclosed, and revealed, to the said enemies of our said lord the king, the times of the sailing and destination of divers other ships of war of our said lord the king, which had lately before that time sailed from this kingdom; and also the number, state, condition, and force of divers other ships of war of our said lord the king, then in the ports of this kingdom: and in another of the said accounts or lists, he the said Francis Henry de la Motte falsely, wickedly, and traitorously notified, disclosed, and revealed, to the said enemies of our said lord the king, the stations of divers ships and vessels of our said lord the king, then cruising against the enemies of our said lord the king: and afterwards, and during the said war, to wit, on the said 1st day of August, in the 20th year aforesaid, at the parish aforesaid, in the county of Middlesex aforesaid, he the said Francis Henry de la Motte, as such false traitor as aforesaid, in prosecution of his said treason and treasonable purposes aforesaid, falsely, wickedly, and traitorously composed and wrote, and caused and procured to be composed and wrote, an account, or state, to be sent to certain subjects of the said French king, in parts beyond the seas, then and yet enemies of our said lord the king; in which said account, or state, the said Francis Henry de la Motte notified, disclosed, and revealed

to the said enemies of our said lord the king, the number of the naval forces of our said lord the king, employed in prosecuting and carrying on the said war, under the command of certain admirals of our said lord the king: and afterwards, and during the said war, to wit, on the 9th day of August, in the 20th year aforesaid, at the parish aforesaid, in the county of Middlesex aforesaid, he the said Francis Henry de la Motte, as such false traitor as aforesaid, in prosecution of his said treason and treasonable purposes aforesaid, falsely, wickedly, and traitorously composed and wrote, and caused and procured to be composed and wrote, a certain other letter, to be sent to certain subjects of the said French king, in parts beyond the seas, and then and yet enemies of our said lord the king; in which said last mentioned letter, the said Francis Henry de la Motte, (among other things) falsely, wickedly, and traitorously notified, disclosed, and revealed, to the said enemies of our said lord the king, that certain ships of war of our said lord the king had then lately sailed to reinforce a squadron of ships of war of our said lord the king, under the command of the said Francis Geary, then being one of the admirals of our said lord the king; and that certain other ships of war of our said lord the king, were then preparing to join the said squadron; and that certain other ships of war of our said lord the king, had sailed under the command of

Murray, esq. then being one of the officers in the navy of our said lord the king, and the place of the destination thereof: and afterwards, and during the said war, to wit, on the 5th day of September, in the 20th year aforesaid, at the parish aforesaid, in the county of Middlesex aforesaid, he the said Francis Henry de la Motte, as such false traitor as aforesaid, in prosecution of his said treason and treasonable purposes aforesaid, falsely, wickedly, and traitorously composed and wrote, and caused and procured to be composed and wrote, a certain other account, to be sent to certain subjects of the said French king, in parts beyond the seas, then and yet enemies of our said lord the king; in which said last mentioned account, the said Francis Henry de la Motte (among other things) falsely, wickedly, and traitorously notified, disclosed, and revealed to the said enemies of our said lord the king, the number and force of the ships of war of our said lord the king, then being in certain ports within this kingdom, equipped for service; and also the number and force of other ships of war of our said lord the king, then cruising against the enemies of our said lord the king, under the command of Robert Digby, esq. then being one other of the admirals of our said lord the king; and also the number and force of the ships of war of our said lord the king, then repairing in certain ports within this kingdom; and the times when certain other ships or vessels, belonging to certain subjects of our said lord the king, were expected to arrive in this kingdom,

from the dominions of our said lord the king, and other places in parts beyond the seas; and the times when certain other ships or vessels, belonging to certain other subjects of our said lord the king, were then expected to sail from this kingdom to the dominions of our said lord the king, and other places in parts beyond the seas: and afterwards, and during the said war, to wit, on the 17th day of November, in the 21st year of the reign of our said lord the king, at the parish aforesaid, in the county of Middlesex aforesaid, he the said Francis Henry de la Motte, as such false traitor as aforesaid, in prosecution of his said treason and treasonable purposes aforesaid, falsely, wickedly, and traitorously composed and wrote, and caused and procured to be composed and wrote, a certain other letter, to be sent to certain subjects of the said French king, in parts beyond the seas, then and yet enemies of our said lord the king; in which said last mentioned letter, the said Francis Henry de la Motte, (among other things) falsely, wickedly, and traitorously notified, disclosed, and revealed to the said enemies of our said lord the king, the time when a squadron of ships of war of our said lord the king, under the command of George Darby, esq. then being one of the admirals of our said lord the king, and then employed in prosecuting and carrying on the said war, was expected to return to this kingdom: and afterwards, and during the said war, to wit, on the said 17th day of November, in the 21st year aforesaid, at the parish aforesaid, in the county of Middlesex aforesaid, he the said Francis Henry de la Motte, as such false traitor as aforesaid, in prosecution of his said treason and treasonable purposes aforesaid, falsely, wickedly, and traitorously composed and wrote, and caused and procured to be composed and wrote, a certain account, to be sent to certain subjects of the said French king, in parts beyond the seas, then and yet enemies of our said lord the king; in which said last mentioned account, the said Francis Henry de la Motte, (among other things) falsely, wickedly, and traitorously notified, disclosed, and revealed to the said enemies of our said lord the king, the number of the land and sea forces of our said lord the king in this kingdom, and other the dominions of our said lord the king beyond the seas; and also the number of seamen in the service of our said lord the king: and afterwards, and during the said war, to wit, on the 1st day of December, in the 21st year aforesaid, at the parish aforesaid, in the county of Middlesex aforesaid, he the said Francis Henry de la Motte, as such false traitor as aforesaid, in prosecution of his said treason and treasonable purposes aforesaid, falsely, wickedly, and traitorously composed and wrote, and caused and procured to be composed and wrote, a certain other letter, to be sent to certain subjects of the said French king, in parts beyond the seas, then and yet enemies of our said lord the king; in which said last mentioned letter, the

said Francis Henry de la Motte, falsely, wickedly, and traitorously notified, disclosed and revealed (among other things) to the said enemies of our said lord the king, the time of the sailing of a squadron of ships of war, of our said lord the king, under the command of sir Samuel Hood, then being one of the admirals of our said lord the king, from this kingdom, and the destination of the said squadron: and the said Francis Henry de la Motte, on the same day and year last mentioned, at the parish aforesaid, in the county of Middlesex aforesaid, in prosecution of, and to promote his treason, imaginations, and compassings aforesaid, falsely, wickedly, and traitorously did send, and procure to be sent, all and singular the said several letters, instructions in writing, accounts or lists, and accounts or states herein before mentioned to have been wrote and composed, and caused and procured to have been wrote and composed, by him the said Francis Henry de la Motte, from the parish aforesaid, in the county of Middlesex aforesaid, to be delivered in parts beyond the seas, to several subjects of the said French king, then and yet being enemies of our said lord the king: and that, during the said war, to wit, on the 30th day of June, in the 30th year aforesaid, at the parish aforesaid, in the county of Middlesex aforesaid, the said Francis Henry de la Motte, as such false traitor as aforesaid, and in prosecution of his said treason and treasonable purposes aforesaid, falsely, wickedly, and traitorously did retain, hire, and procure, and cause to be retained, hired, and procured one Stephen Ratcliffe, then and there being the master of a certain ship or vessel, to carry and convey, in the said ship or vessel, from this kingdom to the kingdom of France, and there to deliver to certain subjects of the said French king, then and yet enemies of our said lord the king, certain letters and instructions, in writing, to inform the said French king and his subjects, then and yet enemies of our said lord the king, of the state, condition, destination, and stations of the naval and military forces of this kingdom; and other advice and intelligence, to enable and assist the said French king and his subjects in the prosecution and carrying on of the said war against our said lord the king and his subjects. And the jurors aforesaid, upon their oath aforesaid, further present, that during the said war, to wit, on the 5th day of January, in the 31st year aforesaid, at the parish aforesaid, in the county of Middlesex aforesaid, he the said Francis Henry de la Motte, as such false traitor as aforesaid, in further prosecution of his said treason and treasonable purposes aforesaid, secretly, knowingly, unlawfully, and traitorously did obtain, procure, and get into his hands, custody, and possession, divers accounts, in writing, of the number and names of the ships of war of our said lord the king, then being at a place called Spithead, near Portsmouth aforesaid, in the said county of

Southampton, and also in the harbour of Portsmouth aforesaid; and of the state and condition of several of the said ships, and of the destination of some of the said ships, and for what time some of the said ships were victualled, and in what services some of the said ships were then expected to be employed; and of the number and names of a squadron of the ships of war of our said lord the king, then shortly expected to sail from the said kingdom, under the command of George Johnston, esq. then being one of the officers in the navy of our said lord the king, and of the time for which the said squadron was victualled, and of certain regiments of the army of our said lord the king, then expected to be taken to sea in the said squadron; and also of the state and condition of divers ships of war of our said lord the king, in parts beyond the seas; and also of certain ships of war of our said lord the king, employed in cruising against the enemies of this kingdom; and of the service in which the said ships were so employed; in order, and with intent, to send, and cause to be sent, the same accounts, of the substance and contents thereof, to certain subjects of the said French king, then and yet being enemies of our said lord the king: and for that purpose, he the said Francis Henry de la Motte, afterwards, to wit, on the same day and year last above mentioned, at the parish aforesaid, in the county of Middlesex aforesaid, falsely, wickedly, and traitorously did carry and convey the said accounts to the dwelling-house of one Richard Otley, situate in the parish aforesaid, in the said county of Middlesex. And the jurors aforesaid, upon their oath aforesaid, further present, that during the said war, to wit, on the said 11th day of January, in the 30th year aforesaid, at the parish aforesaid, in the said county of Middlesex, he the said Francis Henry de la Motte, as such false traitor as aforesaid, in further prosecution of his said treason and treasonable purposes aforesaid, unlawfully and traitorously did retain, hire, and employ one Henry Lutterloh, to obtain accounts and intelligence of the ships of war of our said lord the king, which should sail from Spithead aforesaid, and of the times of sailing, and the names, force, and destination of such ships of war; and also of the arrival at Spithead aforesaid, of such ships of war of our said lord the king, as should arrive at Spithead aforesaid; and also of such ships of war of our said lord the king, as should be in the harbour of Portsmouth aforesaid; and of the state, condition, and force of such ships; and of the times when such ships were expected to sail; and also of the times when such ships should sail; and the destination of such ships; and to communicate such accounts and intelligence to the said Francis Henry de la Motte, in order that he, the said Francis de la Motte, might send such accounts and intelligence to the subjects of the said French king, then and yet being enemies of

our said present lord the king. And the jurors aforesaid, upon their oath aforesaid, further present, that during the said war, to wit, on the said 5th day of January, in the 21st year aforesaid, at the parish aforesaid, in the said county of Middlesex, he the said Francis Henry de la Motte, as such false traitor as aforesaid, and in further prosecution of his treason and treasonable purposes aforesaid, falsely, wickedly, and traitorously did retain, hire, and employ the said Henry Lutterloh, to obtain information and intelligence of the sailing of a squadron of ships of war of our said lord the king, then shortly expected to sail from Spithead aforesaid, under the command of the said George Johnston, then being one of the officers in the navy of our said lord the king, and of the time when such squadron should sail, and of the number and force of the ships of such squadron; and immediately to send, and cause to be sent, such information and intelligence, to certain subjects of the said French king, then and yet being enemies of our said lord the king, against the duty of the allegiance of him the said Francis Henry de la Motte, and against the peace of our said present sovereign lord the king, his crown, and dignity, and also against the form of the statute in such case made and provided.——*Second Count.* And the said jurors, for our said sovereign lord the king, upon their said oath, further present, that an open and public war, on the said 11th day of January, in the 20th year of the reign of our said sovereign lord George the third, by the grace of God, of Great Britain, France, and Ireland, king, defender of the faith, and so forth, and long before, and ever since, hitherto, by land and by sea, was and yet is carried on and prosecuted by Lewis the French king, against our most serene, illustrious, and excellent prince, our said lord the now king; and that the said Francis Henry De la Motte, a subject of our said lord the king, of his kingdom of Great Britain, well knowing the premises, not having the fear of God in his heart, nor weighing the duty of his allegiance, but being moved and seduced by the instigation of the devil, as a false traitor against our said most serene, illustrious, and excellent prince, George the third, now king of Great Britain, &c. and contriving, and with all his strength intending, the peace and common tranquillity of this kingdom of Great Britain to disquiet, molest, and disturb, the government of our said present sovereign lord the king of this kingdom of Great Britain to change, subvert, and alter, he, the said Francis Henry De la Motte, during the war aforesaid, to wit, on the said 11th day of January, in the 20th year aforesaid, and on divers other days and times, as well before as after that day, with force and arms, at the said parish of St. George, Hanover-square, in the said county of Middlesex, unlawfully and traitorously was adhering, aiding, and comforting, to the said Lewis the French king,

and his subjects, then being enemies of our said present sovereign lord the king; and, in the prosecution, performance, and execution of the said traitorous adhering of the said Francis Henry De la Motte to the said Lewis the French king, and his subjects, then being enemies of our said lord the present king, he, the said Francis Henry De la Motte, as such false traitor, during the war aforesaid, to wit, on the said 11th day of January, in the 20th year aforesaid, at the parish aforesaid, in the said county of Middlesex, falsely, wickedly, and traitorously did compose and write, and cause to be composed and wrote, divers other letters and instructions in writing, to shew and inform the said French king and his subjects, then and yet enemies of our said present lord the king, of the state, condition, and force of several of the ships of war of our said lord the king, and of the number of the ships and forces of our said lord the king, then and there designed and prepared for the defence of this kingdom, and the enemies of the said kingdom to attack, repel, and resist; and how some of the ships of war of our said lord the king were manned, and for what time divers ships of war of our said lord the king were furnished with provisions; and of the stations of divers squadrons of ships of war of our said lord the king, employed in prosecuting and carrying on the said war; and the names of the commanders of such squadrons, and the number and force of the ships of war of which such squadrons consisted; and also of the service in which divers other ships of war of our said lord the king were then employed in prosecuting and carrying on the said war; and also the number and force of the ships of war of our said lord the king within certain ports of this kingdom, and of the state and condition of several of the said ships; and of the numbers of the land forces of our said lord the king in this kingdom, and the dominions thereunto belonging; and of the times of the sailing of divers ships of war of our said lord the king, and the destination of the said ships, and the services in which such ships were employed, and of the times when other ships of war of our said lord the king were then expected to sail from this kingdom, and the voyages, cruizes, and services upon which such ships were sailed; and also of the times when other ships of war of our said lord the king, employed in the prosecution and carrying on of the said war, were expected to arrive in this kingdom; and also of the times of the sailing of several ships and vessels, belonging to divers subjects of our said lord the king, from this kingdom to the dominions of our said lord the king, and other places, in parts beyond the seas; and also of the times when other ships and vessels, belonging to divers other subjects of our said lord the king, were expected to sail from this kingdom to the dominions of our said lord the king, and other places, in parts beyond the seas; and also of

the times when other ships and vessels of divers other subjects of our said lord the king were expected to arrive in this kingdom, from the dominions of our said lord the king, and other places beyond the seas: and that afterwards, and during the said war, to wit, on the 11th day of January, in the 20th year aforesaid, at the parish aforesaid, in the county of Middlesex aforesaid, he, the said Francis Henry De la Motte, as such false traitor as aforesaid, in prosecution of his said treason, and treasonable adhering, and purposes aforesaid, falsely, wickedly, and traitorously composed and wrote, and caused and procured to be composed and wrote, a certain letter to be sent to certain subjects of the said French king in parts beyond the seas, then and yet enemies of our said lord the king; in which said letter the said Francis Henry De la Motte, amongst other things, wickedly, falsely, and traitorously notified, disclosed, and revealed to the said enemies of our said lord the king, that certain regiments of the army of our said lord the king were preparing to go to the West Indies; and also of the number of land forces of our said lord the king to be sent to North America and Canada; and of the stations of divers ships of war of our said lord the king, then employed in prosecuting and carrying on the said war by our said lord the king against the said Lewis the French king: and afterwards, and during the said war, to wit, on the 30th day of June, in the 20th year aforesaid, at the parish aforesaid, in the county of Middlesex aforesaid, he, the said Francis Henry De la Motte, as such false traitor as aforesaid, in prosecution of his said treason, and treasonable adhering, and purposes aforesaid, falsely, wickedly, and traitorously composed and wrote, and caused and procured to be composed and wrote, a certain other letter, to be sent to certain subjects of the said French king, in parts beyond the seas, then and yet enemies of our said lord the king; in which said last-mentioned letter the said Francis Henry De la Motte, among other things, wickedly, falsely, and traitorously notified, disclosed, and revealed to the said enemies of our said lord the king, that sir George Brydges Rodney, bart. then being one of the admirals of our said lord the king, was at the island of Barbadoes, in parts beyond the seas, with fourteen ships of our said lord the king, part of a squadron of ships of war of our said lord the king, employed in prosecuting and carrying on the said war, under the command of the said sir George Brydges Rodney, being such admiral as aforesaid; and that seven other ships of war of our said lord the king, other part of the said squadron, kept at sea; and that other ships of war of our said lord the king, other part of the said squadron, were under repair at St. Lucia, in parts beyond the seas; and also that Francis Geary, esq. then being one other of the admirals of our said lord the king, was cruising, with a squadron of other ships of

war of our said lord the king, between the Scilly islands and Ushant; and that certain ships and vessels were getting ready with provisions for the said squadron; and that a certain ship of war of our said lord the king, called the Marlborough, had sailed from Spithead on Tuesday then last past, to join the said squadron; and that certain other ships of war of our said lord the king, employed in prosecuting and carrying on of the said war, were off Cherburgh, in the kingdom of France: and afterwards, and during the said war, to wit, on the 1st day of August, in the 20th year aforesaid, at the parish aforesaid, in the county of Middlesex aforesaid, he, the said Francis Henry De la Motte, as such false traitor as aforesaid, in prosecution of his said treason, and treasonable adhering, and purposes aforesaid, falsely, wickedly, and traitorously composed and wrote, and caused and procured to be composed and wrote, certain accounts, or lists, to be sent to certain subjects of the said French king in parts beyond the seas, then and yet enemies of our said lord the king; in one of which said accounts, or lists, the said Francis Henry De la Motte, falsely, wickedly, and traitorously notified, disclosed, and revealed to the said enemies of our said lord the king, the number, force, and station, of a certain squadron of ships of war of our said lord the king, then employed in prosecuting and carrying on the said war, under the command of the said Francis Geary, then being one of the admirals of our said lord the king; and in another of the said accounts, or lists, the said Francis Henry De la Motte, falsely, wickedly, and traitorously notified, disclosed, and revealed to the said enemies of our said lord the king, the number, names, and force, of certain ships of war of our said lord the king, then in certain ports of our said lord the king in this kingdom, and the state, condition, and destination, of the same ships of war; and in another of the said accounts, or lists, he, the said Francis Henry De la Motte, falsely, wickedly, and traitorously notified, disclosed, and revealed to the said enemies of our said lord the king, the times of the sailing and destination of divers other ships of war of our said lord the king, which had lately before that time sailed from this kingdom; and also the number, state, condition, and force, of divers other ships of war of our said lord the king, then in the ports of this kingdom; and in another of the said accounts, or lists, he, the said Francis Henry De la Motte, falsely, wickedly, and traitorously notified, disclosed, and revealed to the said enemies of our said lord the king, the stations of divers ships and vessels of our said lord the king, then cruising against the enemies of our said lord the king: and afterwards, and during the said war, to wit, on the said 1st day of August, in the 20th year aforesaid, at the parish aforesaid, in the county of Middlesex aforesaid, he, the said Francis Henry De la Motte, as such false traitor as

aforesaid, in prosecution of his said treason, and treasonable adhering, and purposes aforesaid, falsely, wickedly, and traitorously composed and wrote, and caused or procured to be composed and wrote, an account, or state, to be sent to certain subjects of the said French king in parts beyond the seas, then and yet enemies of our said lord the king; in which said account, or state, the said Francis Henry De la Motte notified, disclosed, and revealed to the said enemies of our said lord the king, the number of the naval forces of our said lord the king, employed in prosecuting and carrying on the said war, under the command of certain admirals of our said lord the king: and afterwards, and during the said war, to wit, on the 9th day of August, in the 20th year aforesaid, at the parish aforesaid, in the county of Middlesex aforesaid, he, the said Francis Henry De la Motte, as such false traitor as aforesaid, in prosecution of his said treason, and treasonable adhering, and purposes aforesaid, falsely, wickedly, and traitorously composed and wrote, and caused and procured to be composed and wrote, a certain other letter, to be sent to certain subjects of the said French king, in parts beyond the seas, then and yet enemies of our said lord the king; in which said last mentioned letter, the said Francis Henry De la Motte, (among other things) falsely, wickedly, and traitorously notified, disclosed, and revealed to the said enemies of our said lord the king, that certain ships of war of our said lord the king had then lately sailed to reinforce a squadron of ships of war of our said lord the king, under the command of the said Francis Geary, then being one of the admirals of our said lord the king; and that certain other ships of war of our said lord the king were then preparing to join the said squadron; and that certain other ships of war of our said lord the king had sailed under the command of Murray, esq. then being one of the officers in the navy of our said lord the king, and the place of the destination thereof: and afterwards, and during the said war, to wit, on the 5th day of September, in the 20th year aforesaid, at the parish aforesaid, in the county of Middlesex aforesaid, he the said Francis Henry De la Motte, as such false traitor as aforesaid, in prosecution of his said treason and treasonable adhering, and purposes aforesaid, falsely, wickedly, and traitorously composed and wrote, and caused and procured to be composed and wrote, a certain other account, to be sent to certain subjects of the said French king, in parts beyond the seas, then and yet enemies of our said lord the king; in which said last mentioned account, the said Francis Henry De la Motte, (among other things) falsely, wickedly, and traitorously notified, disclosed, and revealed, to the said enemies of our said lord the king, the number and force of the ships of war of our said lord the king, then being in certain ports within this kingdom, equipped for

service; and also the number and force of other ships of war of our said lord the king, then cruizing against the enemies of our said lord the king, under the command of Robert Digby, esq. then being one other of the admirals of our said lord the king; and also the number and force of the ships of war of our said lord the king, then repairing in certain ports within this kingdom; and the times when certain other ships or vessels, belonging to certain subjects of our said lord the king, were expected to arrive in this kingdom, from the dominions of our said lord the king, and other places, in parts beyond the seas; and the times when certain other ships or vessels, belonging to certain other subjects of our said lord the king, were then expected to sail from this kingdom to the dominions of our said lord the king, and other places, in parts beyond the seas: and afterwards, during the said war, to wit, on the 17th day of November, in the 21st year of the reign of our said lord the king, at the parish aforesaid, in the county of Middlesex aforesaid, he the said Francis Henry De la Motte, as such false traitor as aforesaid, in prosecution of his said treason and treasonable adhering, and purposes aforesaid, falsely, wickedly, and traitorously composed and wrote, and caused and procured to be composed and wrote, a certain other letter, to be sent to certain subjects of the said French king, in parts beyond the seas, then and yet enemies of our said lord the king; in which said last mentioned letter, the said Francis Henry De la Motte, (among other things) falsely, wickedly, and traitorously notified, disclosed, and revealed, to the said enemies of our said lord the king, when a squadron of ships of war of our said lord the king, under the command of George Darby, esq. then being one of the admirals of our said lord the king, and then employed in prosecuting and carrying on the said war, was expected to return to this kingdom: and afterwards, and during the said war, to wit, on the said 17th day of November, in the 21st year aforesaid, at the parish aforesaid, in the county of Middlesex aforesaid, he the said Francis Henry De la Motte, as such false traitor as aforesaid, in prosecution of his said treason and treasonable adhering, and purposes aforesaid, falsely, wickedly, and traitorously composed and wrote, and caused and procured to be composed and wrote, a certain account, to be sent to certain subjects of the said French king, in parts beyond the seas, then and yet enemies of our said lord the king; in which said last mentioned account, the said Francis Henry De la Motte, (among other things) falsely, wickedly, and traitorously notified, disclosed, and revealed, to the said enemies of our said lord the king, the number of land and sea forces of our said lord the king, in this kingdom, and other the dominions of our said lord the king beyond the seas, and also the number of seamen in the service of our said lord the king: and after-

wards, and during the said war, to wit, on the said 1st day of December, in the 21st year aforesaid, at the parish aforesaid, in the county of Middlesex aforesaid, he the said Francis Henry De la Motte, as such false traitor as aforesaid, in prosecution of his said treason and treasonable adhering, and purposes aforesaid, falsely, wickedly, and traitorously composed and wrote, and caused and procured to be composed and wrote, a certain other letter, to be sent to certain subjects of the said French king, in parts beyond the seas, then and yet enemies of our said lord the king; in which said last mentioned letter, the said Francis Henry De la Motte, falsely, wickedly, and traitorously notified, disclosed, and revealed (among other things) to the said enemies of our said lord the king, the time of the sailing of a squadron of ships of war of our said lord the king, under the command of sir Samuel Hood, then being one of the admirals of our said lord the king, from this kingdom, and the destination of the said squadron. And the said Francis Henry De la Motte, on the same day and year last mentioned, at the parish aforesaid, in the county of Middlesex aforesaid, in prosecution of the said traitorous adhering of the said Francis Henry De la Motte to the said Lewis the French king, and his subjects, enemies of our said lord the king, falsely, wickedly, and traitorously did send, and procure to be sent, all and singular the said several letters, instructions in writing, accounts or lists, and accounts or states, herein before-mentioned to have been wrote and composed, and caused and procured to have been wrote and composed, by him the said Francis Henry De la Motte, from the parish aforesaid, in the county of Middlesex aforesaid, to be delivered, in parts beyond the seas, to several subjects of the said French king, then and yet being enemies of our said lord the king; and that during the said war, to wit, on the 30th day of June, in the 20th year aforesaid, at the parish aforesaid, in the county of Middlesex aforesaid, the said Francis Henry De la Motte, as such false traitor as aforesaid, and in prosecution of his said treason and treasonable adhering, and purposes aforesaid, falsely, wickedly, and traitorously did retain, hire, and procure, and cause to be retained, hired, and procured, one Stephen Ratcliffe, then and there being the master of a certain ship or vessel, to carry and convey, in the said ship or vessel, from this kingdom to the kingdom of France, and there to deliver to certain subjects of the said French king, then and yet enemies of our said lord the king, certain letters and instructions in writing, to inform the said French king and his subjects, then and yet enemies of our said lord the king, of the state, condition, destination, and stations of the naval and military forces of this kingdom, and other advice and intelligence, to enable and assist the said French king and his subjects in the prosecu-

tion and carrying on of the said war against our said lord the king and his subjects. And the jurors aforesaid, upon their oath aforesaid, further present, that during the said war, to wit, on the 5th day of January, in the 21st year aforesaid, at the parish aforesaid, in the county of Middlesex aforesaid, he the said Francis Henry De la Motte, as such false traitor as aforesaid, in further prosecution of his said treason and treasonable adhering, and purposes aforesaid, secretly, knowingly, unlawfully, and traitorously did obtain, procure, and get into his hands, custody, and possession, divers accounts, in writing, of the number and names of the ships of war of our said lord the king, then being at a place called Spithead, near Portsmouth aforesaid, in the said county of Southampton, and also in the harbour of Portsmouth aforesaid, and of the state and condition of several of the said ships, and of the destination of some of the said ships, and for what time some of the said ships were victualled, and in what services some of the said ships were then expected to be employed; and of the number and names of a squadron of the ships of war of our said lord the king, then shortly expected to sail from the said kingdom, under the command of George Johnston, esq. then being one of the officers in the navy of our said lord the king, and of the time for which the said squadron was victualled; and of certain regiments of the army of our said lord the king, then expected to be taken to sea in the said squadron; and also of the state and condition of divers ships of war of our said lord the king, in parts beyond the seas; and also of certain ships of war of our said lord the king, employed in cruising against the enemies of this kingdom, and of the service in which the said ships were so employed; in order and with intent to send, and cause to be sent, the same accounts, or the substance and contents thereof, to certain subjects of the said French king, then and yet being enemies of our said lord the king; and for that purpose he the said Francis Henry De la Motte, afterwards, to wit, on the same day and year last above mentioned, at the parish aforesaid, in the county of Middlesex aforesaid, falsely, wickedly, and traitorously did carry and convey the said accounts to the dwelling house of one Richard Otley, situate in the parish aforesaid, in the said county of Middlesex. And the jurors aforesaid, upon their oath aforesaid, further present, that during the said war, to wit, on the said 11th day of January, in the 20th year aforesaid, at the parish aforesaid, in the said county of Middlesex, he the said Francis Henry De la Motte, as such false traitor as aforesaid, in further prosecution of his said treason and treasonable adhering, and purposes aforesaid, unlawfully and traitorously did retain, hire, and employ one Henry Luttrell to obtain accounts and intelligence of the ships of war of our said lord the king, which should sail from Spithead aforesaid, and

of the times of sailing, and the names, force, and destination of such ships of war; and also of the arrival, at Spithead aforesaid, of such ships of war of our said lord the king as should arrive at Spithead aforesaid, and also of such ships of war of our said lord the king as should be in the harbour of Portsmouth aforesaid; and of the state, condition, and force of such ships; and of the times when such ships were expected to sail; and also of the times when such ships would sail, and the destination of such ships; and to communicate such accounts and intelligence to the said Francis Henry De la Motte, in order that he, the said Francis Henry De la Motte, might send such accounts and intelligence to the subjects of the said French king, then and yet being enemies of our said present lord the king. And the jurors aforesaid, upon their oath aforesaid, further present, that during the said war, to wit, on the said 5th day of January, in the 21st year aforesaid, at the parish aforesaid, in the said county of Middlesex, he the said Francis Henry De la Motte, as such false traitor as aforesaid, and in further prosecution of his treason and treasonable adhering and purposes aforesaid, falsely, wickedly, and traitorously did retain, hire, and employ the said Henry Lutterloh, to obtain information and intelligence of the sailing of a squadron of ships of war of our said lord the king, then shortly expected to sail from Spithead aforesaid, under the command of George Johnston; then being one of the officers in the navy of our said lord the king; and of the time when such squadron should sail, and of the number and force of the ships of such squadron; and immediately to send, and cause to be sent, such information and intelligence to certain subjects of the said French king, then and yet being enemies of our said lord the king, against the duty of the allegiance of him the said Francis Henry De la Motte, and against the peace of our said present sovereign lord the king, his crown and dignity, and also against the form of the statute in such case made and provided."

On Friday, the 13th of July, the prisoner was brought from the Tower, in custody of the sheriffs, to the prison of Newgate. He was set to the bar, and pleaded Not Guilty to his indictment. The Court assigned him, at his own request, Mr. Dunning and Mr. Peckham for his counsel, and Mr. Platel for his solicitor.*

* Another account of this Trial, the title page of which represents that it was 'taken in short-hand' by James Wallice, esq. of the Middle Temple, but which in fact is a very meagre abridgement (the whole report not occupying thirty small 8vo pages) miserably executed, mentions that

"Mr. Peckham then applied to the Court, that Mr. De la Motte might be lodged in Clerkenwell Bridewell, where a room had been prepared for him, and might not be sent to Newgate, where there was no place for him, but stalls [qu. cells] for condemned criminals, now much crowded. The Court at first

On Saturday, the 14th of July, the court being opened, and the prisoner set to the bar,

debated, whether they could comply under their commission, which is, 'to deliver the gaol of Newgate of the prisoners therein being;' but afterwards ordered Mr. De la Motte to New Prison, Clerkenwell, informing him, that his trial would commence the following morning precisely at nine o'clock; whereupon he bowed respectfully, and retired from the bar, attended by the sheriffs, Mr. Peckham, &c."

"The sheriffs of London and Middlesex having received M. de la Motte, on Friday morning, from the lieutenant of the Tower, and being desirous that he should have every possible comfort, took upon themselves to confine him, on Friday, in New-Prison, Clerkenwell, where he had a very commodious apartment, and was attended by one of the under-sheriffs, who sat up in his bed-chamber all the night, and who brought him from thence on Saturday morning to the bar. They also applied on Friday, by letter, to lord Stormont, respecting the place of his confinement, in case of conviction, representing to his lordship, that in the present ruinous state of Newgate, there was no apartment of safe custody in that jail, except the cells, already over-crowded with capital convicts, and that the other prisons in the county were not properly subject to the controul of the sheriffs; humbly submitting to his lordship, whether it might not be proper, in case the prisoner should be convicted, to order him to be re-committed to the Tower. His lordship, in a few hours, returned an answer, by letter, to the sheriffs, signifying to them his majesty's pleasure (in consequence of their representation) that Mons. De la Motte, if convicted, should be remanded to the Tower, and desiring that they would give immediate notice to one of the principal secretaries of state of his conviction, if it should so happen, that the necessary directions might be given to the lieutenant of the Tower, to receive him back from the sheriffs, into his custody. In consequence of this, as soon as sentence was pronounced, the sheriffs dispatched one of their under-sheriffs to the secretary of state's office, who, in little more than an hour, brought back an order from lord Hillsborough, in lord Stormont's absence, to the lieutenant of the Tower, to which place M. de la Motte was conveyed at twelve o'clock at night, by Mr. sheriff Chrichton, accompanied by sir Stanier Porten, one of the under secretaries of state, who having been an evidence on the trial, was necessarily attending all day at the Old Bailey, and, at the request of the sheriff, was so obliging as to accompany him to the Tower, to remove any difficulties that might arise concerning the receiving of the prisoner at that late hour of the night. M. De la Motte was in another coach, attended by Mr. Akerman, who says, that he never in his life saw a man in his situation with more becoming firmness and fortitude; and that he only expressed the same wish to him as he had to the sheriffs, that his dissolution might be immediate, by striking off his head, if his majesty would graciously grant him that indulgence. After waiting about a quarter of an hour, till the necessary directions could be obtained for opening the gates, Mr. sheriff Chrichton delivered over, and took leave of the prisoner, who expressed in the warmest terms, his most grateful acknowledgment to Mr. sheriff Sainsbury and him, for their polite attention to him while in their custody; and particularly for the trouble they had taken in obtaining an order for his being sent back to the Tower." Annual Register, 1781.

the jurors returned by the sheriff were called into court.

Roger Griffin, of Islington-road, esq. challenged by the prisoner.

Edward Bond, of Golden-square, brewer, sworn.

Edward Seward, of Goswell-street, dyer, challenged by the prisoner.

George Fillingham, of St. John's-street, hop-merchant, sworn.

John Pay, of Islington-road, brewer, sworn.

Joseph Brayne, of Rosoman's-row, mason, sworn.

Thomas Chadley, of Spa-fields, carpenter, challenged by the prisoner.

Apsley Pellat, of St. John's-street, ironmonger, challenged by the prisoner.

John Weston, of Battle-bridge, tile-maker, challenged by the prisoner.

John Lewis, of Islington, gentleman, challenged by the prisoner.

William Fasson, of Holborn, pewterer, sworn.

Thomas Proctor, of Holywell-street, brewer, challenged by the prisoner.

Edward Paul, of Holborn, hosier, challenged by the prisoner.

Edward Jukes, of Holborn, japanner, challenged by the prisoner.

William Wilkinson, of Fullwood's-rents, gentleman, challenged by the prisoner.

Richard Jupp, of the King's-road, surveyor, challenged by the prisoner.

Evan Jones, of Eyre-street, gentleman, challenged by the prisoner.

William Blason, of Hatton-street, carpenter, sworn.

Hickman Young, of Hatton-street, upholsterer, sworn.

Richard Worsley, of Hatton-street, turner, challenged by the prisoner.

Richard Wiggins, of Leather-lane, tallow-chandler, challenged by the prisoner.

Edward Mettam, of Charles-street, Hatton-garden, bricklayer, sworn.

John Morton, of Great Saffron-hill, baker, challenged by the prisoner.

Samuel Lessey, of Great Saffron-hill, carpenter, challenged by the prisoner.

William Hunter, of Great Saffron-hill, gentleman, challenged by the prisoner.

Henry Sidgier, of Chancery-lane, upholsterer, challenged by the prisoner.

Richard Christmass, of Kentish-town, gentleman, sworn.

Richard Toft, of Kentish-town, farmer, sworn.

Thomas Prior, of Great Russel-street, bricklayer, sworn.

Joseph Gribble, of Gloucester-street, carpenter, sworn.

The Jury.

Edward Bond,	Joseph Brayne,
George Fillingham,	William Fasson,
John Pay,	William Blason,

Hickman Young,	Richard Toft,
Edward Mettam,	Thomas Prior,
Richard Christmass,	Joseph Gribble.

The Clerk of the Arraignment charged the Jury with the Prisoner.

Counsel for the Crown.—Mr. Attorney General (James Wallace); Mr. Solicitor General (James Mansfield, in 1804, C. J. of C. B.); Mr. Howorth; Mr. Norton.

Solicitor.—William Chamberlayne, esq. solicitor for the affairs of his majesty's Treasury.

Counsel for the Prisoner.—Mr. Dunning; Mr. Peckham.

Solicitor.—Mr. Platel.

Mr. Norton. May it please your lordship, and you gentlemen of the jury; the prisoner at the bar, Francis Henry De la Motte, stands charged with the crime of high treason. The indictment sets forth, that he, Francis Henry De la Motte, being a subject of Great Britain, and well knowing that public war was carried on by Louis the French king against our sovereign lord king George the 3d, and intending to subvert the government of this kingdom, on the 11th day of January, in the 20th year of his present majesty, and at divers other days and times, at the parish of St. George, Hanover-square, in this county, did traitorously compass, imagine, and intend, to depose and kill our present most gracious sovereign.

Gentlemen, the overt acts laid in the indictment, to prove this treason, are, that he, the prisoner at the bar, to bring to effect such his traitorous intention, did write, procure, and send from this kingdom to France, several letters, instructions, lists, and accounts, to inform the French king of the state, condition, designations, and stations, of the naval and military forces of this kingdom, in order to enable the French king to carry on the war against this country; and this is laid to have been done by the prisoner against the duty of his allegiance, against the peace of our sovereign lord the king, his crown and dignity, and against the form of the statute in such case made and provided.

Gentlemen, there is another count, charging the prisoner with high treason, in adhering to the king's enemies; and the overt acts laid are the same with those in the first count.—To this indictment the prisoner has pleaded that he is Not Guilty. We, who are of counsel for the crown, will call our witnesses; and if they prove the charge against him, it will then be your duty to find him guilty.

Mr. Attorney General. May it please your lordship, and you gentlemen of the jury, I am of counsel on the same side, in support of this prosecution, which imputes to the prisoner at the bar the crime of high treason; and the particular acts which constitute the offence are charged by the indictment to consist of

procuring and sending intelligence to the French king and his subjects, with whom this country is at war, to inform that government of the force, condition, equipment, and destination of the ships employed by his majesty in the prosecution of the war against France—of the destination of the ships of the subjects of this country engaged in the commerce of it—of the time of their sailing—of the time when they are expected to arrive—and of every circumstance which can enable the enemy not only to defeat or avoid our enterprises, but to intercept and destroy our commerce. This, in substance, is the charge against the prisoner at the bar: it is a treason of the most dangerous nature. An aid and support of this sort, to an enemy, is the most effectual and important that any private man can possibly give.

The prisoner is supposed to be a Frenchman by birth; he certainly is not a natural-born subject of this country: but I must inform you, that whilst he is under the protection of the laws of this kingdom, he owes allegiance to it equal to that of any natural-born subject. It has been the custom of modern times, during war and hostilities, not to drive out of this country the subjects of the enemy who are resident in it, or even to prevent others from coming whose occasions or curiosity may bring them: but it has ever been understood, that, whilst they are here under the protection of the laws and government, they do nothing detrimental to the state, and that they owe the same allegiance to the king, during the time they stay, as any natural-born subject whatever.

Perhaps a philosopher might discover some shades of difference in the moral turpitude of an act against the state committed by those who owe perpetual allegiance to it, and by those whose allegiance is local and temporary; but in the scale of policy, and in consideration of law, no distinction will be found: the crime and the punishment are the same. If the enemy, by intelligence from this country, be assisted in the operations of the war, or in the means of defence, it matters very little whether that intelligence is derived from one of our own subjects, tempted and seduced to the service, or from spies of their own nation placed among us; the effects are the same; and therefore, if the prisoner at the bar shall appear to have committed acts which if done by a natural-born subject would have amounted to high treason, he is guilty of that crime.

At what time the prisoner at the bar first came into this country, I am not enabled to state to you with precision; but you will find him here, from the evidence I shall produce, in January, 1780. He had lodgings then, and till the time he was apprehended, at a Mr. Otley's in Bond-street, for which he paid a hundred guineas a year. He made the figure of a gentleman; had his servants, and got introduced into the company of gentlemen: his employment necessarily called for every

means of obtaining intelligence, which his address and management could possibly procure; and you will find, in the sequel of this cause, that a more vigilant, a more industrious, or a more able spy, was never placed in any country. The intelligence he procured will astonish you.

About June 1780, a correspondence with the enemy was discovered, which continued a considerable time before the prisoner was detected as the author.

One Ratcliffe, the owner of a cutter at Folkstone, in Kent, who will be called, was hired by one Roger to carry dispatches, the nature of which was not explained, from Folkstone to Boulogne, in France, to be delivered to the commissary of marine there: he was to be paid 20*l.* a trip, and to have also some recompence for his speedy conveyance there. This was the agreement that he made with Roger, who turned out afterwards to be the servant of the prisoner. He carried a dispatch or two from Folkstone to Boulogne, when the secrecy he was enjoined to observe in the carriage and delivery of the dispatches, and other circumstances, created in his mind a suspicion that he was carrying intelligence to the enemy. He communicated his suspicion, and the grounds of it, to Mr. Stewart, a merchant, at Sandwich. Mr. Stewart concurred in the same opinion; and, in order effectually to discover whether the suspicions were well founded or not, it was agreed that Ratcliffe should deliver up to Mr. Stewart one of the packets which had just been delivered to him, and that Mr. Stewart should carry it immediately to one of the secretaries of state, to be examined, and should then return it to Ratcliffe. Mr. Stewart accordingly brought the packet to lord Hillsborough's office; it was opened, and the nature of the correspondence was discovered to be such as I have already stated to you, and which I shall take more particular notice of by and by.

From this time every dispatch given to Ratcliffe was by him delivered to Mr. Stewart, who either brought it himself, or sent it to the secretary of state: it was opened, the material papers copied; the packet was then made up in the same manner, returned to Ratcliffe, and by him carried to Boulogne. They were generally delivered to the commissary of marines at Boulogne; the letters were signed by fictitious names, and the address was also fictitious: but some of the inclosures were directed to M. Sartine, the marine minister at the court of France; others to a M. Baudovin, who was also a minister employed in that court, and to other people resident at Paris. Various endeavours were made to discover the author, without effect: at last a scheme was formed to detect him by the means of Ratcliffe. Ratcliffe had frequently hinted that he was employed in the business, without mentioning by whom: he had not been paid the gratuity for dispatch, which had been promised him: he affected to quar-

rel with Roger on that account, and insisted upon seeing the principal. He came to town, and Roger agreed he should be introduced to the principal: he went to Roger's house; Roger went out, and brought with him the prisoner, M. De la Motte. Ratcliffe made his complaint. M. De la Motte told him, that as to the first three or four dispatches, they had gone with all the expedition wished, but that some of the last had been so much delayed, that the same news, by other channels, had got to France before them, and that the dispatches were of no use. He told Ratcliffe he should not give him any thing then, but he assured him he would not only give him 20*l.* a trip for the dispatches in future, but that he would give him, in the month of January, as a present, if he found the expedition in carrying them was according to his expectation, the sum of a hundred guineas. Upon this plain and unequivocal avowal, by the prisoner at the bar, of the correspondence, preparations were made to apprehend him.

It is now proper to notice, more particularly than I have yet done, the nature of the correspondence which was carried on through the means of Ratcliffe.

In the first dispatch, which was given by Ratcliffe to Mr. Stewart, was contained a letter addressed to M. Sartine; it was dated the 30th of June, 1780.

[Here the Counsel for the Prisoner submitted to the Court, that the Attorney General ought not to be permitted to state the contents of the copy of a letter; that they founded their objection upon the well-known rule, that a copy is not the best evidence which the nature of the subject affords, when the original is not proved to be not in existence; that it ought not to be permitted to any man, for any purpose, to part with the original, intending to substitute a copy in the stead of it; that because the admission of the copy would deprive the prisoner of an opportunity of proving that the original, which was stated to have come through the hands of the prisoner's servant, was not the hand-writing of the prisoner; and that, if their objection to the admissibility of the copy should prevail, the present was a proper stage to make the objection, previous to the opening to the jury the contents of the letter.

The Court were of opinion that the subject was taken up rather prematurely; that, as there were circumstances under which a copy might be admitted in evidence, it would not be right to stop the Attorney General from stating that part of the case, and the proper time for making the objection would be when the copies were offered to be given in evidence.]

Mr. Attorney General. Gentlemen, I state to you the evidence I have to produce, and the nature of that evidence: if it is not competent in law when it comes to be offered,

your own good sense will lay it out of the case; and the Court, in their attention to subjects of this kind, will inform you that what is opened, of which there is no legal proof, ought to be erased from your memory, and to make no part of your consideration.

The first letter is addressed to M. Sartine, and is dated the 30th of June, 1780: in the beginning it says, "Answers to the questions of the 24th instant;" clearly referring to some questions to which he was to give answers. There is in the letter an account of the East India affairs, and the India ships preparing to sail; and of the troops that are going there, and of the ships expected home, and a great deal of information respecting the India possessions. He then says, "We have no news from admiral Rodney: we know he is at Barbadoes with fourteen ships of the line, and that Rowley keeps at sea with seven, and that the others are under repair at St. Lucia." He goes on, and says, "We receive very frequent accounts from admiral Geary, who cruizes between the Scilly islands and Ushant, and preserves his communication with the channel. We are getting ready several vessels with provisions for his fleet. The Marlborough sailed last Tuesday from Spithead to join him. With regard to the other ships in our ports, we are getting them in readiness, but want men to fit them out. The Nonesuch of 64, Jupiter of 50, five frigates, and two fire-ships, continue off Cherbourg, of which you must needs be well informed. By my next letters, I shall send you the state of our ports, and of the fleets of merchant ships to come in, those of which, from Jamaica and the Leeward islands, cannot arrive before the end of June."

In this packet there was one to M. Baudovin, which says, "I have just received your letters of the 24th instant. You will be pleased not to send me any intelligence by the post, that is to say, not to write under any name whatever, either to me, or to Mr. Simper. In the name of God, write no more by the post to me, or to Mr. Simper! The man, whose address you sent me, committed a thousand follies and blunders upon the delivery of it: in the name of God, send no mortal to me upon any pretence whatever! For God's sake, take care to preserve my life." On the 1st of August following, you will find another, which is addressed to M. Baudovin; and he says, in the first paragraph of this letter, (the rest I shall not trouble you with particularly,) "I have the honour to send you herewith a very exact state of the naval forces, armed and to be armed this year; though observing in this dispatch my monthly custom (as for eight days the public papers give us a very imperfect account of the naval forces.) I desire you to observe, that the particulars of this state, from the accuracy of my accounts, are always of two and three months before their execution." Then, after giving some intelligence respect-

ing the ships that are out, follows, "A list of the naval forces, armed or to be armed; their stations, destination, and crews, the 1st of August, 1780." You have then, first, "the naval force under the command of admiral Geary, on the 26th of July, off the bay of Ushant; longitude, E. of London, 11 deg. 12 min. lat. 49 deg. wind E. N. E. changeable." Then there follows a list: "Total 26 ships of the line, nine frigates, five cutters, and three fire-ships." Then there is a long list of the naval forces in the ports of England, on the 1st of August, and the destination of their armaments. Then a list of ships and frigates lately sailed, as well as those that are to sail. Then he states the time of sailing, and the time expected that those in port would sail. This is followed with a note-bene: "It is to be observed, that the ships above described, are all that we can arm this year; therefore I make no mention of those on the stocks, to the number of nine, which cannot be finished before about the month of March, 1781." Then there follows a list of the ships and frigates, with their force, cruising upon their several stations. Then he recapitulates the whole of this catalogue of the ships that are in port, that are out, that are under the command of different squadrons, and that are cruising. This is a letter of the 1st of August, 1780.

There is in the next dispatch, letters of the 9th of August, 1780; one directed to M. Sartine, in which there seems to be contained, a copy of some letter of admiral Geary's, stating his condition, and the situation of his ships. Then he takes up accounts from the Admiralty, where he states, that "the utmost endeavours are used to reinforce the fleet under the command of admiral Geary; that they had dispatched the Valiant of 74 guns, and the Bienfaisant of 64 guns. The Fortitude of 64 guns, the Prince William 64, the Monarque 70, the Princess 70, and the Gibraltar 80; these five ships are fitting out, one by one, and will be sent out, as they are in order, to join admiral Geary." Then he goes on to state, "the fleet of merchantmen, and the transports for New York, are still detained at Spithead; we cannot determine on letting them sail, before we have received the news from America. As to our maritime condition at home, look to my last list of the 1st of August, and add to it the contents of this letter, and you will be faithfully informed." Then he states, "some cruisers are gone to the north. Our fleets, ready to sail at a minute's notice, consist, first, of that for New York, having 3,000 German troops, and from 60 to 80 merchantmen; secondly, of a fleet for New York, with provision and ammunition, consisting of 36 vessels, which are to go from Cork; thirdly, of a fleet of 20 sail for Charles-town, and Savannah. Our fleets expected home in the course of the month, are, first, 300 sail from the Windward Islands; secondly, seven ships from the East

Indies; thirdly, from Lisbon and Oporto; fourthly, from the Baltic."—This is the account he gives, in the letters of the 9th of August. There is, besides, a letter to the commissary of the marine, at Boulogne. I read this for the postscript that is to it. "The letter, which you did me the honour to write to me, dated the 3d of this month, has been transmitted to me, in which, I see with concern, that orders have prevented your remitting to me the commission of the first, agreeable to my desire: I write in consequence, and make no doubt that you will be informed of the pleasure of our friend, desiring you, for the good of our house, in whatever way the merchandize may be sent, to be so good as to receive them, and send them, either by Lefevre or otherwise, and continue to inform me of the receipt of them, and that in the cautious style, which you will do me the favour to make use of.—N. B. In every future letter, which I shall have the honour to send you for yourself, I will put for direction, 'For Mr. T. Smith.'"

There are in the future packets, intelligence to the same import, giving, at different periods, accounts of our naval and military armaments, which I will not take up the time of the Court in stating particularly.

I have already taken notice, that upon the discovery of the prisoner, by the means of Ratcliffe, to be the author of this intelligence, preparations were made to apprehend him. His lodgings were at Mr. Otley's, in Bond-street, and a messenger, with a constable, was sent to seize him there. On the morning of the 4th day of January last, they went to the house, under information that the prisoner was then at home: they enquired for him, were told by his servant, he was not at home, and that he did not know where he was, nor when he would return: they searched the house, but could not find him; they determined to wait in the house: they had the precaution to take into custody the servant of the prisoner; if he had been permitted to go out of the house, it is probable that he might, either personally, or by some means, have communicated to the prisoner a disagreeable visit of two gentlemen at his lodgings. They staid all night; the prisoner did not come home; they waited the next day: in the evening there was a double rap at the door; they sent the servant to open the door; it was the prisoner, who was returned from the country. In going up stairs, the servant informed him of the company that were in the house, and of the manner in which he had been treated; this alarmed the prisoner; he turned short about, and was endeavouring to get out at the door, but the constable seized him by the collar: a struggle ensued, and in the contest the prisoner took out of his pocket some papers, which he did not choose should be found upon his person, and threw them on the stairs; probably flattering himself that he could do it unperceived, and that, though

they should be found, yet there might not be any proof that they belonged to him, or had ever been in his custody; but the messenger observed the prisoner throw the papers from him, and instantly picked them up, and secured them. The prisoner was then taken into the dining-room, where he was searched, and other papers found.

The papers which he was so solicitous to get rid of, it will behove me to state to you. There were two papers; the first contained an account of the ships that had suffered, or were supposed to have suffered, by the storm in the West Indies.—“The Thunderer, Stirling-castle, and Scarborough, missing, and given over for lost; the Phoenix, Victor, Barbadoes, the vessels lost, with every thing but the men; Ramilies, Southampton, Pallas, Pelican, Jamaica, Tobago, cruizing to windward of Jamaica, all well; Albion, Diamond, Janus, Porcupine, these ships are fit for sea at Jamaica; the Princess Royal was alongside the wharf at Jamaica, in order to be cleaned. The fleet destined for Gibraltar is said to consist of eighteen sail of the line, and to take six months provision, and to be got ready with all possible expedition: what the rest of the ships are, and when they will sail, is at present unknown. Romney, Monmouth, Jupiter, Jason, Diana, Active, Mercury, Shark sloop, Lark cutter, Infernal, victualled for eight months, and to take two regiments, namely, Humberston's and Fullarton's regiments, consisting of 1,000 men each regiment; and to take a number of artillery; but when they sail, and on what service, is a profound secret. Commodore Johnstone has been sent for to London, where he is at present. What ships are going with sir Hugh Palliser is not known; but hear he is to hoist his flag on board the Hero, which is expected here from Plymouth every hour. The Foudroyant and Bienfaisant, at Plymouth; the Canada, Edgar, and Warwick, are still on their cruize; the Canada was seen in distress. The Minerva is in the Downs, to convoy the bishop of Osnaburgh to Germany. The Alert has brought the under-mentioned authentic account from Jamaica;—Ruby, all her quarter-deck guns thrown overboard; Grafton, ditto, ditto, ditto; Hector, all her guns thrown overboard except two; Trident, none or little damaged; Bristol, all her quarter-deck guns thrown overboard; Egmont, all dismasted, and received other considerable damages; Endymion, Ulysses, Pomona, Resource, Hinchinbrook, Leostoff, Endeavour, Badger, have received no damages but what may be repaired in fourteen days time.” The second paper is an account of all the ships lying at Spithead; an account of all the ships lying in Portsmouth harbour: and then there is a weekly account of the sick and wounded seamen in Haslar Hospital.

Amongst the papers found on the prisoner, there was a letter from a Mr. Lutterloh, of Wickham, near Portsmouth, addressed to

his banker in town: this shewed the prisoner had been at Mr. Lutterloh's. This gentleman had resided more than a year at Wickham; he lived as a gentleman, though the means of his support were not known there. It was thought expedient to apprehend him; a messenger was sent down: he was apprehended, and brought to town. There were no papers of consequence found upon him. In his examination before lord Hillsborough, he acknowledged the most important papers found on the prisoner, to be of his hand-writing, which he had given to the prisoner, at Wickham, some days before; that he was in the service and employment of the prisoner, to procure accounts of the ships in the harbour at Portsmouth, and at Spithead; and to give the most early intelligence to the prisoner, that he might communicate it to the government at France: that his pay had increased, and for a considerable time had been fifty guineas a month, besides large presents which had been made him by the prisoner, sufficient to enable him to live at a great expence, and to corrupt a clerk in office, at Portsmouth, to furnish intelligence: his intelligence was very accurate, and communicated with all dispatch to the prisoner, which he sent off by the means of Roger, or by other conveyances; for from the letters it may be collected, that he had employed other persons to carry these dispatches to France. Lutterloh was asked if he had no letters or papers to prove his correspondence with the prisoner: he said, he had, but that they were buried in his garden at Wickham, in order to conceal them; and described the place where these papers were deposited. A messenger was sent down, to search for them; he found them in the place described, and brought them to town. In them you will find a full confirmation of the truth of the story related by Lutterloh.

It seems, the French ministry were extremely anxious to intercept the squadron destined on a secret expedition, under the command of commodore Johnstone; and, in order that they might have the earliest intelligence of the sailing of that squadron, the prisoner had given instructions in writing to Lutterloh, to dispatch two vessels the moment the squadron set sail, one to Brest, and another to Cadiz, with letters to the commandants at those ports, leaving blanks for the day and hour of sailing, and the number, names, and force of the ships, which were to be filled up by Lutterloh. The prisoner also left with him covers addressed to the commandants, in his own hand-writing; there were also many other covers, in which intelligence was to be sent, addressed in the hand-writing of the prisoner.

There were other papers in the prisoner's hand-writing, of less consequence; some letters, with promises of money, and a promissory note from the prisoner to Lutterloh, dated the 14th of June 1780, for the payment

of 121*l*. on the 21st of the same month: this was part of the pay due from the prisoner to Lutterloh.

The hand-writing of the prisoner in these papers, led to a further discovery. In the beginning of the year 1780, there being a suspicion that intelligence was given to the enemy, under cover to a M. Grolay, at No. 64, Rue de Richelieu, at Paris, orders were sent to the post office, to stop all letters with that address: two were stopped, one dated the 11th of January, 1780, and the other, the 1st of December in the same year. From the comparison of those, with the letters wrote by the prisoner, it appeared manifestly they were of the same hand-writing. They will be proved, to your satisfaction, to be of the prisoner's hand-writing, though under feigned signatures. The first contains accounts of the ships at Portsmouth, and their destination; of the number of land forces getting ready for the West Indies, and America; the times when certain convoys were expected to sail, and other important intelligence: the other letter contains intelligence of the sailing of the fleet under the command of sir Samuel Hood, for the West Indies.

These are the general outlines of the case I have to lay before you, against the prisoner.

There are a great variety of facts which constitute distinct overt-acts of treason.

By the statute of the 25th of Edward 3, the compassing the king's death, and adhering to his enemies, are declared to be treason.

Every act tending to subject this kingdom to the dominion of a foreign power, and done with that intent, is held, and rightly, to be an overt-act of compassing the king's death.

Intelligence given to an enemy to assist them in the operations of the war, is an overt-act of that species of treason, and also a direct adherence to the enemy.

Any measures actually taken, which manifest a traitorous intention, are overt-acts of treason.

The sending intelligence by the means of Ratcliffe, is an overt-act.

The sending the letters by the post, though intercepted from getting to the enemy, is an overt-act; for the prisoner did every thing in his power to have them conveyed.

The hiring of Ratcliffe to carry intelligence to the enemy, although he had never conveyed any, is an overt-act.

The hiring Lutterloh to procure intelligence for the prisoner, to be by him sent to the enemy, and to dispatch immediate notice to the enemy of the sailing of commodore Johnstone's squadron, is an overt-act.

And the obtaining the papers found upon the prisoner, from Lutterloh, in order to communicate the intelligence they contained, to the enemy, is also an overt-act.

I trust we shall lay before you clear and full proof against the prisoner, of all these acts of treason; but if we should establish one only,

to the satisfaction of your minds, it will be your duty to pronounce him guilty.

EVIDENCE FOR THE CROWN.

[The Witnesses were examined apart.]

Stephen Ratcliffe sworn.

Examined by Mr. Solicitor General.

What business do you follow?—The sea.

Where have you lived?—At Folkstone.

Have you had a vessel of your own?—Yes.

Look at the prisoner. Have you seen that gentleman before?—Yes, I have.

Where did you see him?—At Mr. Roger's, who lived in Greek-street, Soho, at No. 28.

What brought you and him together?—To make an agreement to carry some papers to Boulogne.

Did you talk to M. De la Motte upon that business?—Yes.

What did you go to him for?—To make a fresh agreement. I had been carrying some before. Mr. Roger had promised me 100*l*. He said there was a gentleman would give it me; and I wanted to see the gentleman.

And that brought you together with the gentleman at Mr. Roger's house?—Yes.

You said you had carried some before?—Several.

Whom did you receive them from?—Mr. Roger.

Where were they delivered to you?—Some at Canterbury; one at Folkstone; and at different places.

Where were you to carry them to?—To the commissary at Boulogne.

Did you go, as you were employed to do, with those papers, from time to time, to this gentleman at Boulogne?—I went up to the house but once: I employed the merchant's wife that we have concerns with to carry them up.

You know a merchant there, do you?—Yes.

Once you went to the commissary yourself?—Yes.

Why did not you at other times go to the commissary himself, but go to the merchant's house?—They did not like I should go, for fear there should be some suspicion.

You said you had carried some before, and the reason of your applying to him was to know about this 100*l*?—Yes.

What did he say to you upon this subject?—He said, "If I could carry them, and carry them quicker, that he would give me the money; but he could not give it me now, because there were papers carried quicker than I carried them, and so they were of no use."

Did he complain, then, of your not going so fast as others?—He complained so far as this; he said, "the news was carried over, they knew it before."

You had not been quick enough for him, then?—The first two or three times he liked it very well.

How much were you paid a trip for this?—20*l.* a time.

Did he tell you how often he would employ you?—Mr. Roger said it would be constant, once a week. Mr. Roger made that agreement with me first.

Did you at any time deliver to any person any of the papers you received from Mr. Roger?—Yes.

Whom did you deliver them to?—To Mr. Stewart, a gentleman of Sandwich.

You said you received some from Roger; did you receive any from De la Motte?—No; I received 20*l.* from him, but Roger gave me the papers.

Was the prisoner present when Roger gave you the papers?—Yes; he told Roger to go and fetch it down stairs. Roger fetched the papers: then he gave me the parcel, and M. La Motte gave me a 20*l.* note.

You say you carried several to Mr. Stewart?—Yes.

After you had delivered them to Mr. Stewart, did he deliver them back to you again?—Sometimes he gave them to me himself, and sometimes he sent them back.

When they were either given back to you by Mr. Stewart, or sent back to you by him, did you carry them to Boulogne, as you were directed?—I did: I either carried them myself, or sent them.

Sent them, by whom?—A person I put in as master; I could not always go myself.

Court. Who is Roger?—*A.* A gentleman that lives in Greek-street, Soho, No. 28: he is a Frenchman, I believe.

What do you take Mr. Roger to be?—He did the business for this gentleman.

Cross-examined by Mr. *Dunning.*

What did you say you took Mr. Roger to be?—He did the business for this gentleman; he was employed by this gentleman.

I want to understand from you the same question that my lord put to you, what you took Roger to be?—He makes small boxes.

He is described as being a toyman; I hope he is truly described?—Yes.

You came to M. De la Motte, in consequence of being informed by Roger that a gentleman would give you 100*l.* for something or other, if you would come to him?—Yes.

And that gentleman, you say, did give you a 20*l.* note, and not 100*l.*?—He gave me a 20*l.* bank-note.

Be so good as to inform us what else he gave you: did he not give you two great trunks?—Roger gave me them.

What you got, and for which you received 20*l.* were two large trunks?—There were two large trunks.

Do you know what were the contents of those trunks?—No.

What did you do with them?—I carried them over to Boulogne.

You did not then carry them to your friend

Stewart?—I did not: Mr. Stewart opened one of them.

What did it contain?—Draughts; maps, I think they call them.

Prints?—Yes, and pictures.

What was in the other of them?—The model of a gun.

Then this is all that was contained in those two trunks, for the carriage of which to Boulogne you received 20*l.*?—Yes.

Mr. Stewart did not stop either of them?—No.

He packed them up again, and then forwarded them on immediately, either by yourself or your sub-captain?—Yes.

This was the only time you ever saw M. De la Motte?—Yes, to my knowledge.

You are a Folkstone seaman, are you?—Yes.

I don't know whether I understood you rightly, or no; I understood you to say that M. De la Motte did not talk to you at all about any papers?—He talked about carrying the papers over.

These two trunks?—Yes.

But did not talk about any other papers?—No farther than saying, "I had not carried quick enough."

Repeat the words he said upon that subject?—When Mr. Roger came up, he told M. De la Motte I was the gentleman: he said "he could not give me the money."

Mention all that passed, and content yourself with saying all that passed?—To the best of my remembrance, he said, "That the gentleman complained, over on the other side, that I did not carry them quick enough, and he could not pay me the money then, unless I could make satisfaction, and carry them quicker."

Carry what?—The papers.

Did he mention any thing about papers?—I can't say he did.

That you did not carry the things quick enough?—That I did not carry the things quick enough, did not give satisfaction.

Was this what he said, and all that he said?—He did not say but very little more; it is all I can remember.

Then, upon your oath, this is all that you recollect; that you did not carry the things quick enough, and therefore he could not give you the 100*l.* Roger had been talking to you about?—No.

But he directed Roger to deliver you these two trunks, for the conveyance of which he delivered you 20*l.*?—Yes.

This, upon your oath, is what passed, and this is all that passed between ye?—Yes, to the best of my remembrance; but there might be a word or two more pass.

But if there was any thing else, it is what you cannot remember?—It is; I cannot remember.

Mr. *Solicitor General.* You said the prisoner, De la Motte, said you had not carried the things quick enough. What things had

you carried for Roger before?—Small papers tied up, containing about as much as two or three news-papers would be.

And you had carried nothing else for Roger, had you?—No.

You told me that M. De la Motte desired Roger to fetch the paper, and he brought it down to you?—Yes; he did.

Did you carry that paper, or send it along with these trunks?—I sent it in the same boat.

You told me, but I don't know whether you meant to say so or not, that, as the reason why M. De la Motte would not give you the money, unless you went quicker, the news got there before what he sent by you, and therefore it was of no use. Did he say something to that purpose?—Yes.

You have not mentioned the time when this was?—It was some time in November last, I believe; I cannot rightly recollect, for I never set any thing down.

Isaac Nicholas Roger sworn.

Examined by Mr. Howorth.

Do you know M. De la Motte, the prisoner?—Yes.

How long have you known him?—About two years.

Upon what occasion were you first introduced to his acquaintance?—By means of one Mr. Waltrond.

For what purpose, and upon what occasion?—To sell some things of my trade.

That was the first acquaintance you had with him?—Yes.

Do you know Stephen Ratcliffe, the last witness that was called?—Yes.

Were you at any time, and when, employed by any body to give to Ratcliffe any thing?—Yes: I gave to Ratcliffe some parcels of papers sometimes.

What was to be done with them?—To be carried over to Boulogne.

What were to become of them, when they were to be carried over to Boulogne?—The papers were directed to a Mr. Smith, a merchant at Boulogne.

In how many instances do you recollect having given papers to Ratcliffe?—I cannot remember that.

More times than one, two, three, or four?—Do you mean that I have been to Ratcliffe?

Yes, that you have been to Ratcliffe?—More than that.

Who paid Ratcliffe?—I paid him.

How much were you used to pay him for a trip?—I gave him twice only 15*l.* a time, the other times 20*l.*

Do you remember any complaint being made by Ratcliffe about the sum he had received; and did he express any desire to see any person besides you?—Yes, I remember that.

Whom did he ask to see?—To see M. De la Motte.

Did he, in consequence of that application,

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see M. De la Motte?—He pressed me to see M. De la Motte.

Was he, in consequence of that desire, introduced to him?—I saw M. De la Motte at home at my house, and he saw him there.

Did you give any intimation to M. De la Motte who this Ratcliffe was that wanted to speak with him?—I said that Ratcliffe wanted to speak to him.

Did M. De la Motte know who Ratcliffe was?—I don't know at all.

You did not tell him then the business he wanted to speak with him on?—No: I told him Mr. Ratcliffe wanted to speak with him; desired him to call at home to speak with him, and he did call.

Do you know whether he had ever seen Ratcliffe before?—I don't know.

Or knew his name, and what he was?—I don't know.

Had you no talk with M. De la Motte before that time about this Ratcliffe?—Not before, that I recollect.

When M. De la Motte met Ratcliffe at your house, and you had told M. De la Motte that Ratcliffe wanted to speak with him, what did he say?—He said, I have nothing to do with Ratcliffe; but, he said, I will call upon you to see what he wants.

When he did call, what passed between Ratcliffe and him?—When Ratcliffe called, I left him and De la Motte in my room; I don't know what they did.

What room were they in, in your house?—In a little room.

Who introduced M. De la Motte into the room? Was Ratcliffe in the room?—Ratcliffe staid at home all the day, and dined with me; he was there since ten o'clock in the morning.

Was there any person in the room besides Ratcliffe, the prisoner, and you?—No: I was in the room with Ratcliffe when the prisoner came.

What did you hear pass between them?—M. De la Motte went directly into the fore room: I said directly to Ratcliffe, there is the gentleman that wants you.

Did you continue in the room, or then go out?—I staid a few minutes in the entrance-room where I was, and from there I went up stairs, to fetch a packet to give to Mr. Ratcliffe, that Mr. Waltrond gave me two days before; I took it, and a long box full of prints he gave me to take care of; I gave that box and the packet to Ratcliffe in the room.

Was De la Motte present in the room at the time?—He was, and told him to take care of the prints.

Who bid you go up stairs to fetch the packet and the box?—I don't believe I received any order from any body.

I wish you would recollect who sent you up for that packet, or why you went up for it at that particular time, when De la Motte and Ratcliffe were present together?—I was not in a hurry to give it him, but as he was going out.

How came you to go up stairs for this packet, when M. De la Motte was there?—Because I did not know that it was safe to give it him before.

Who sent you up for it?—I don't remember that I received any order for it; it was my inclination to go to fetch it, because I knew I had that packet to give to him.

You brought the packet down, and the prints?—No; the prints were below; the packet was up stairs.

What was paid Ratcliffe at that time, and by whom?—I did not give any thing to him at that time.

Did any body else give any thing to him at that time?—He told me he received 20*l.* from M. De la Motte.

Was M. De la Motte present when he told you that?—No; that was after.

You paid him nothing at that time for that?—No.

How long were M. De la Motte and Ratcliffe together?—Five minutes, I think, but I cannot tell about the time: it was not long: they did not sit down.

I ask you, upon your oath, whether, before that time, or after that time, you received any packets from M. De la Motte?—I can't tell how many I received from M. De la Motte.

I don't want to know how many you received from M. De la Motte: did you receive some before, and some after that?—Yes.

What did you receive them for?—To give to Ratcliffe.

For what purpose?—To carry over to Boulogne.

When these packets were delivered, had you any orders from any person to give Ratcliffe directions about them, as to the dispatch he was to make?—The direction always was upon it.

Did you receive orders from any person, and did you give those orders to Ratcliffe, to make dispatch?—The order was given by Mr. Waltrond the first time; I don't remember that I gave any order.

Have you at any other time?—I never spoke about any body at all, that I remember.

When the packets were delivered you, for the purpose of being given to Ratcliffe to carry abroad, were any directions given by any person whether he was to make haste, or what?—I never gave any directions. Mr. Waltrond gave them the first time.

Who was Mr. Waltrond?—A friend of M. De la Motte's.

What business was he?—I don't know: at first he was in the smuggling way.

What was he when he brought you these packets?—I know he has his family in Paris; and I came over with him first.

He is a Frenchman?—Yes.

Did he carry on any business that you know of at the time you were carrying these packets to Ratcliffe?—He sometimes sent some prints over: he was a friend of M. De la Motte's:

he told me several times he was in partnership with him.

Don't mention what he told you. Where is he now?—In Paris.

How long is it since he went there?—He went there the Sunday before Christmas.

Do you know a gentleman of the name of Lutterloh?—Yes; I know him very well.

Have you carried any letters at any time to Lutterloh?—No; I have never been at Mr. Lutterloh's. I know him; and have seen him about four or five times.

Where have you seen him?—I think it was the first time, or the second, that he called upon me when I was not at home: he left his directions.

Have you at any time seen him in the company of De la Motte?—Yes; I saw him two or three times after with M. De la Motte.

Where?—In M. De la Motte's apartments.

Any where else?—No; I don't remember.

Do you recollect how long ago it was?—No; I don't remember what time.

About how long ago is it?—I think, for about five months before De la Motte was taken up.

I see you have had a good deal of trouble. Who used to pay you for your trouble?—I don't know.

Upon your oath, have not you been paid for the trouble you have taken?—Yes, I have been paid myself for my trouble.

Who paid you?—Mr. Waltrond and M. De la Motte, both paid me.

How much did you use to receive?—Eight guineas a month.

Any thing besides that?—No.

Were you at your own expences?—No, I did receive always the money for the stage.

You have been paid these eight guineas, you say, both by Waltrond and De la Motte?—Yes.

What do you mean by the stage you were paid for?—The stage coach from Piccadilly; Mr. Waltrond gave me only a guinea for my stage.

What do you mean by being paid for your stage? where was it to carry you to?—Canterbury.

Were you used to receive letters that were to be left at your house for any body?—Yes, sometimes Mr. Waltrond gave me directions to somebody; I don't know whom.

Do you remember any post marks upon any letters you received?—When I received them, I did not take notice.

To whom did you carry these letters?—Mostly when Mr. Waltrond was at home: when he expected letters, he used to dine with me.

Did you ever carry any to M. De la Motte?—Yes, one or two.

Do you recollect to whom they were directed?—I never minded that at all.

Were the letters addressed to Waltrond, to M. De la Motte, or to any person that you

can remember?—No more than to Mr. Roger, No. 20, Greek-street, Soho.

Did you open them, or give them unopened?—I never opened one.

How came you, then, to deliver letters, unopened, to Waltrond and De la Motte, which were directed to yourself?—I had no letters at all to receive for myself. Mr. Waltrond asked me if I would do so; and I did not care.

Had you any directions to deliver them to M. De la Motte?—No.

You did, in many instances, you say, deliver letters to M. De la Motte: how came you to do that?—M. De la Motte came to me; when I see there are letters for Waltrond, as I think, De la Motte has taken the letters and opened them.

What was done with the letters after he had opened them? did he leave them, or take them away with him?—He never left them with me. Sometimes he burnt some; but he never read one to me.

Do you know what the post mark was?—I never minded, at all, the post mark. I believe it was from France; because I paid sometimes 6d. sometimes 1s. 6d. and sometimes 2s. for the postage.

Had they any English letters?—The directions were always in English.

Can you recollect what post marks were upon any of these letters? do you recollect the name of the town or place?—I can't tell. I never took any notice of that.

Cross-examined by Mr. Peckham.

I think you said, just now, you knew but very little of Mr. Lutterloh?—I have seen him four or five times.

Were you examined before the grand jury?—Yes.

Was Mr. Lutterloh examined at the same time?—Yes.

You are, I think, a toy-man?—Yes.

You became acquainted, you say, with De la Motte, being introduced to him by Mr. Waltrond?—Yes.

Has De la Motte purchased of you, toys of various articles, and to various amounts?—I have sold some prints to him. When M. De la Motte came to me first, he saw some prints I had at home; he said, You have got some very fine prints there; he said, he should be glad if I would take the trouble to buy some for him: I said, with all my heart: and I bought, for him, from last July or August, till December; I paid, myself, 300*l.* for prints I purchased for him.

Do you know whether De la Motte purchased any other articles that would be valuable upon the Continent?—Many of these, I know, went abroad, because I myself carried them abroad.

Were they sent abroad by De la Motte?—Yes.

To whom did you deliver them?—Mr. Barwens, at Ostend.

I hardly need ask you, whether Ostend is not in the Austrian Netherlands, and does not belong to France?—It belongs to the Emperor.

Mr. Barwens is a merchant at Ostend?—Yes.

Did you ever carry any prints for De la Motte to any other place than to Ostend?—I gave some to Ratcliffe.

Did you carry any of these prints to any other place, save Ostend?—I sent some to a Mr. Le Clerk's, at Ostend.

Were those likewise prints?—It was the same: it was a square box; and there was, I saw, a print in it.

Do you know whether De la Motte dealt in any other articles besides prints? Did he purchase toys, or any thing of that kind?—There were some toys he purchased of me; I sold him some tooth-pick cases, smelling-bottles and cases, and snuff-boxes: these are what I make myself.

Do you know whether he dealt in any Birmingham goods?—He often spoke to me about Birmingham: I gave myself to Ratcliffe a packet with Birmingham goods in it; and it is lost.

Was that packet given to Ratcliffe by the order of M. De la Motte?—Yes; I received the order of M. De la Motte, and gave it to Ratcliffe.

Waltrond dealt in contraband goods?—Yes; he carried on a trade in them. After that, he had a place in the Temple; and he began again the trade.

At the time you used to buy goods for M. De la Motte, Waltrond dealt in contraband goods?—Yes, I bought some myself, some lace, for him.

I think you said M. De la Motte knew nothing of Ratcliffe?—I think M. De la Motte never saw Ratcliffe.

He told you he knew nothing of him, and that he wondered what he wanted with him?—When I told him Ratcliffe wanted to speak to him, he said, What does that man want with me?

Waltrond, you say, had given you a packet two days before M. De la Motte and Ratcliffe met at your house?—Yes.

And while M. De la Motte was there, you went up stairs and fetched that packet, and gave it to Mr. Ratcliffe?—Yes.

Was that the packet, and the only packet, that went from your house by Ratcliffe with the two boxes?—It was one packet, and a round box, which I gave to him; he put a padlock to the box.

Did you see that box opened?—I put the prints into it myself: then Mr. Ratcliffe locked it up. M. De la Motte recommended me to put some oil-cloths round it. Ratcliffe took out of his pocket a padlock, and put it to the box.

So you put the prints into the box?—Yes.

Was there in that box any thing but prints?—No; I packed them up.

You have been asked some questions about some letters that had been left at your house. All the addresses of the letters were in English, were they not?—Yes.

Mr. Waltrond had no house of his own, I believe: he lived in lodgings?—He did.

And went from place to place to collect these contraband articles which he dealt in?—Yes.

As you were an acquaintance of Waltrond's, you were not, I suppose, much surprised that he should desire to have his letters left at your house?—No: he was my friend.

Having no certain place of abode?—No; he had a lodging.

Waltrond, you say, was acquainted with M. De la Motte?—Yes.

Therefore, if M. De la Motte happened to come to your house when you had a letter directed to Mr. Waltrond, and Mr. Waltrond was not there to see it, then M. De la Motte took that letter to carry to Waltrond, supposing he might see him sooner than you would?—I don't know what he might do with it.

Mr. Howorth. Perhaps you may have seen what these Birmingham goods were?—A. No.

Do you recollect seeing the model of a gun?—Yes; it was in the box.

When you have been carrying over to Ostend and other places these prints, did you ever take any paper or packet besides?—A. Yes; I took some letters.

From whom?—M. De la Motte and Mr. Waltrond.

Who did you carry them to?—I gave some to one Mr. Lefevre, of Ostend; and gave them when they took the packets to Mr. Barwen's.

Where were the packets to be conveyed to?—They were directed to Mr. Lefevre, of Ostend, and to Mr. Barwen's.

And where were they to go to from Ostend together with the prints?—The packets were carried sometimes to Paris, to Mr. Dessein. Mr. Lefevre was at Ostend, as a man there, for Mr. Dessein, and he took the packet, and carried it to Mr. Dessein; that is what he told me himself.

Court. What he told you is not evidence.

Mr. Howorth. You don't know that yourself?—A. No.

Were you paid for going to Ostend each journey?—I received ten guineas, twelve guineas, and fifteen pounds.

And your expences besides?—No; for all.

Have you made these journeys for any other person besides M. De la Motte?—For Mr. Waltrond and M. De la Motte.

Have you made these journeys for any other person besides Mr. Waltrond and M. De la Motte?—No.

Did you pay any person, when you were over there, for forwarding these packets?—No; I gave them to Lefevre.

What is he?—He is there a servant to

make the trade for Mr. Dessein; he was sent to buy carriages, or any thing, for Mr. Dessein.

Mr. Peckham. You say you had received from 10 to 15*l.* a voyage?—A. Yes.

How often have you received that from M. De la Motte?—I cannot tell that.

Did Mr. Waltrond or M. De la Motte pay you?—I believe Mr. Waltrond paid me the money first.

How often have you been these trips?—About six times in six months.

How many times did Waltrond pay you afterwards?—I am sure I received from M. De la Motte one or two times, or two or three times.

When these trunks were carried to Ostend, there you delivered them?—Yes.

But you do not know, you did not see with your own eyes, that they ever went from Ostend?—No.

Lefevre, you say, is a person who acts for Mr. Dessein, of Calais?—Yes.

Does not Lefevre live at Ostend?—Yes.

Has he an house or shop there, and attends the market to buy goods?—He has a room there.

And he purchases goods for Mr. Dessein, of Calais, you believe?—Yes: when I was there, I said to Lefevre, It is better for you, if you can; and he set off sometimes the next day, sometimes the same day, for Mr. Dessein.

And he was employed for Dessein?—I don't know: I have seen him there.

Mr. Howorth. And you saw him set off with the packet?—A. Yes.

Do you know that he took the packet with him?—No.

You often went in the stage from London to Canterbury?—Yes, when I gave the packet to Ratcliffe.

Court. When you went from London to Canterbury in the stage, and carried a packet, which you delivered to Ratcliffe, did you carry any thing else with you?—A. I do not remember that I did.

Court. Did you at any one time, when you went, go with a packet only, without any other parcel?—A. I do not remember that.

When you went from London to Canterbury, did you carry any thing except paper with you?—I never went to take any thing else.

Then, when you went from London to Canterbury with nothing else but the paper, you received eight guineas for going to Canterbury?—Eight guineas a month.

And how often did you go down to Canterbury?—I have been always three or four times a month.

Mr. Danning. These eight guineas a month were also for what you did in town?—A. Yes.

The whole employment you had under these people was paid for at eight guineas a month? that was for all you did, whether by going into the country, or what you did in

town?—I was paid for the carriage too. When I bought prints for M. De la Motte, he always paid me a shilling in the guinea commission.

The only question I meant to put to you was, whether these eight guineas included payment for any thing done in town, or any thing besides your journeys to Canterbury? What were you to be paid eight guineas a month for? Did you receive that eight guineas a month for the whole that you did? for going to Ostend, for buying the prints, and the whole? or was it only for going to Canterbury?—I received eight guineas a month, when I was to go to Canterbury, or to Folkstone. I have been two or three times to Folkstone.

Mr. Joseph Stewart sworn.

Examined by Mr. Norton.

Where do you live?—At Sandwich.

Do you know Mr. Ratcliffe?—I do very well.

Was any application made to you, by Mr. Ratcliffe, about the month of July last?—There was.

What was the nature of that application? Mr. Ratcliffe delivered to me a packet, which, he said, he was employed by Mr. Roger to carry over to Boulogne; which packet he was to deliver to the commissary there.

Mr. Dunning. Do not mention what he said to you: what did he do?—*A.* He delivered to me a packet at Folkstone.

What did you do with that packet?—I brought it to town.

Have you any minutes?—I have, (refers to his minutes) I received it upon the 3d of July, at Folkstone. I brought it to town immediately: and on the 4th, early in the morning, I delivered it into the hand of sir Stanyer Porten, at his house, in St. James's-place.

What sort of packets were they?—This was put up in a piece of white paper, tied with a string, and sealed up.

Of what size?—To the best of my recollection, the first was not so large a packet as many subsequent ones. I apprehend the first packet might weigh about three quarters of a pound.

What size was it?—I believe the size might be nearly that (about four inches by nine.)

Was any superscription upon it?—Yes, it was directed for a Mr. Smith, negociant, at Boulogne.

What became of that packet?—Sir Stanyer Porten said, the packet must be opened, and the contents looked into. I was desired to wait, to see whether it was to be returned or not: I waited several hours. I delivered the packet to sir Stanyer Porten, I believe, about six in the morning. Sir Stanyer was in bed; I called him up, and I believe I received it back again about one. I carried it back myself to Folkstone, and gave it to Ratcliffe.

What packet did you receive next?—The next which came to my hands, I did not receive from Ratcliffe; I was not in the way, and it was delivered to a friend of mine at Folkstone. It was given to me at Sandgate, near Folkstone, by Mr. Farley of Folkstone.

Go on to the next packet?—On the 16th of July, I received, from Ratcliffe, at Canterbury, another packet; that packet I put up into a cover, and sent it, by a post-office express, to Mr. Stephens, of the Admiralty: I wrote, in that cover, a direction to whom he was to deliver it. I received that same packet back again, at Canterbury, in the night between the 17th and 18th of July, about midnight, or perhaps rather after. It was brought back to me by a Mr. Winchester, a messenger of the Admiralty: he came to my bed side with it.

What was done with that packet after you received it?—I had a servant of mine there in waiting: I put that packet into a cover, and sent it to a builder, at Sandgate, who knew the direction, one Mr. Wilson.

Is he here?—No. On the 2d of August, in the morning, I met Ratcliffe on Westminster-bridge: I was coming to town in a post-chaise; he was going down in the diligence; he stepped out of the diligence, and got into my chaise; he gave me a packet which he said he had just received from Roger, to carry to Boulogne. I carried that to sir Stanyer Porten, and delivered it myself: I waited till they had done with it, and then took it, and carried it back to Sandgate, and gave it to Ratcliffe. On the 10th of August, I received in the evening another packet, at Canterbury, from Ratcliffe. One Scott, an Admiralty messenger, went to Canterbury with me; I gave it him, and he took it up to the Admiralty. I received that packet back, by Scott, at my own house, at Sandwich; and I sent it by my servant to Sandgate, under a cover, directed to Mr. Wilson, for him to deliver it to Ratcliffe. On the 18th of the same month, I received at Sandwich a packet from one Lewis Benfield, who brought it me from Ratcliffe: he was one of the boatswains of the boat.

Mr. Peckham. Is he here?—*A.* No.

Mr. Peckham. Then that is done with; that must be scratched out.

Stewart. On the 30th, I was at Sittingborne; going down the road, I met a messenger from Folkstone, coming to me, one Mr. Richard Broome of Folkstone.

Mr. Peckham. Is he here?—*A.* Not to my knowledge.

Mr. Peckham. Then that is nothing.

Stewart. The next packet went through my son's hands, and not through mine.

Is your son here?—He is. I never saw the packet: I knew there was one coming, and sent him to receive it. There was one about the 22d of August; but I can't speak perfectly to that.

Attorney General. Pass over any that you can't speak to particularly.

Stewart. On the 15th of September, I received, at Canterbury, from the hands of Ratcliffe, another packet: I sent that, by a post-office express, to sir Stanyer Porten; and received it back again, from him, at Folkstone, on the 17th, in the morning, by an express. I gave it into the hands of one Wilson, who is since dead: he was one that belonged to Ratcliffe's boat. On the 18th of November, I received another packet, at Canterbury, from Ratcliffe; I sent that, by a post-office express, to Mr. Stephens, at the Admiralty, who returned it back in the same manner to Canterbury: after I received it back, I sent it, by a post-office express, to London; desiring Mr. Stephens to return it back to me, in the same manner, to Canterbury. I could not, with convenience, go to Canterbury myself, but I sent a servant to bring it from Canterbury to me, at Sandgate: I received it at Sandgate, and gave it there myself to Ratcliffe. The next I received, was on the 16th of December, in the evening, from Ratcliffe, at Sandwich, where I live: I brought that to London myself, and delivered it upon the 17th, at night, to sir Stanyer Porten; I received it back again, from him, on the 18th: I put it up in a cover, and sent it by express to Canterbury: I ordered it to be given to Ratcliffe; and I saw it afterwards in Ratcliffe's hands.

Do you know of any other packets delivered to you from Ratcliffe?—I had several which came from Boulogne.

Attorney General. That is not enquired into.

Cross-examined by Mr. Peckham.

Were there any packets that you received, with your own hands, from Ratcliffe himself, which were delivered into the hands of sir Stanyer Porten?—Yes, I delivered one to him on the 4th of July; that which I received on the 3d from Ratcliffe's own hands.

Do you know of any other?—On the 17th of December, I delivered one to him, which I received from Ratcliffe on the 16th; that is all.

Sir Stanyer Porten sworn.

Examined by Mr. Attorney General.

You are in the office of my lord Hillsborough, one of the secretaries of state?—I am.

Did you ever receive, from a Mr. Stewart, any packet?—Several.

I mean, directly from the hands of Mr. Stewart?—I received several, from his own hands, and others, that he transmitted to me.

Have you any minutes of those you received from his own hands?—The first I remember perfectly; I received it on the 4th of July last year.

Did you cause it to be opened?—I carried it myself to the post-office; there it was open-

ed, and I read the contents of it: after that, while somebody else copied one of the letters, I copied two myself.

Did you take the copies of all three?—I have the copies of all three; two in my own hand, and one in another person's.

Who is that other gentleman?—I forget his name, but here is a person here, who, I believe will swear to it.

Did you copy in the same place?—No, in different rooms: I was by myself.

Had you read the dispatch which he copied?—I did, before he copied it.

Now, sir Stanyer, after you read this dispatch, and had taken copies, what did you do with the papers?—The originals were given to one in the post-office, who made them up in the cover again, as I supposed, and he delivered the packet back to me. The originals I delivered back to Mr. Stewart.

We will first go to those you received from the hands of Mr. Stewart.—I received another, from Mr. Stewart, on the 2d of August; I carried it myself to the post-office; it was opened, and I read all the contents, but took no copies of them myself.

Were any copies taken?—They were taken by some of the gentlemen at the post-office. The packet with the originals, after they were put in again, was delivered to me.

What became of the copies?—The copies were sent to me in another packet.

You have these copies?—I have.

What did you do with the packet that contained the originals?—I conveyed that to Mr. Stewart.

Do you know of any others?—There were several others which were conveyed to me by Mr. Stewart; but I never saw the contents of them, only those of the 4th of July and the 2d of August; not the originals.

What did you do with them, then, when they came to you?—I delivered them to Mr. Todd, at the post-office, under another cover.

What was to be done with them at the post-office?—I desired them to copy them, to return the originals in the original packet, and send the copies to me.

How did you direct your covers?—To Anthony Todd, esq.

On the outside what was there?—Two covers: the inside was marked 'private,' that he might open them himself, or one of his trusty officers.

Did you receive those packets back again as the packets containing the originals?—I regularly received the original packets, and the copies too, in different packets; then I either delivered them into Mr. Stewart's own hands, or conveyed them to him, either through the hands of Mr. Stephens, of the Admiralty, by expresses of the post-office, or by the Admiralty messengers, and ordered them to be forwarded to the places to which they were directed.

Please to produce those you can speak to yourself.—These (producing them) are of the

4th of July; two of them are copied by myself, No. 2, and No. 3; No. 1 was copied by another person.

Did you read the original of No. 1, before it was copied?—Yes, I did.

Did you read the copy made by the clerk of the post-office, after it was made?—I did.

Mr. *Dunning*. The original you had not in your possession, to compare with it?—A. No.

Cross-examined by Mr. *Peckham*.

There were three letters in all, on the 3d of July?—Yes; No. 1, 2, and 3.

Two of which you copied yourself?—Yes: I made an extract of No. 3, because the latter part only related to private affairs.

No. 1, you did not copy?—No.

Neither did you compare the copy with the original?—I did not.

How many letters on the 2d of August did you copy yourself?—I did not copy one.

Then the only one you know any thing of by copying yourself is No. 2? Who did you give those originals to at the post-office?—I gave them either to Mr. Todd, or a Mr. Maddison, who is the nephew of Mr. Todd.

Or to a Mr. Somebody else, whose name you may have forgot?—No, never.

You cannot recollect who the gentleman was that you gave them to?—That on the 4th of July, I think, to Mr. Maddison.

How many did you give to either one or the other, on the 2d of August?—One, and two inclosures in it.

To whom did you give those three?—Either to Mr. Todd or Mr. Maddison, you may depend upon it.

Mr. *John Maddison* sworn.

Examined by Mr. *Solicitor General*.

You are in office in the post-office?—I am.

Do you remember sir Stanyer Porten at any time bringing some packets to you on the 1st of July?—Yes.

Do you remember the contents of that packet being copied by any person?—Yes.

Look at the copy, No. 1. Whose hand-writing is that?—It is the hand-writing of a Mr. Dupree, who is dead.

Mr. *Peckham*. How do you know that he is dead?—A. I attended his funeral.

Mr. *Peckham*. We object to the reading of these copies, or to the reading of the originals, till such time as it is proved that they came from the hands of M. de la Motte.

Mr. *Attorney General*. The ground upon which we offer to read these letters, is, that De la Motte and Waltrond appear from the evidence to be carrying on the same business, and that sometimes the packet is brought by one, sometimes by the other; he is paid by one, or he is paid by the other, indifferently; and Ratcliffe says, De la Motte told him that the two or three first packets went in proper time. Roger would not distinguish which packets he received from Waltrond, or which

he received from De la Motte; but he received from both, and was paid by both for his trouble; and also for the money he paid Ratcliffe, the 20*l.* a trip, to carry these packets to Boulogne. Ratcliffe proves that he said the two or three first went in good time; but complained of a delay latterly, and that, unless he carried them with more expedition, they would be of no use, because the same intelligence got there sooner; and that he should give him 100*l.* in the January following, as a reward, over and above the 20*l.* a trip. It is upon this ground we now offer to the court the copies of these letters.

Mr. *Dunning*. No. 3, being an extract, that certainly cannot be read, if a copy may: therefore the question arises upon No. 2, and it is very clear, that there is no proof from any one witness, that he affects even to believe, much less will say, that No. 2 was ever received from the prisoner, or that it was ever communicated to him, or that he knows any thing more of the matter than I do. Your lordship is told, Waltrond and the prisoner carried on the same trade. The trade, if it is to be called a trade that they carried on, is, I suppose, in these pictures, Birmingham goods, toys, &c. If there is any connection between them, it is undoubtedly of that sort. A partnership in treason, is a new species of trade to be carried on, that what one man does, should it be high treason, the other shall be answerable for; though it does not appear he knows any thing of the matter. This is independent of the general objection, that these copies ought not to be received at all, even if they were authenticated; the paper in question wants that authentication. It was said De la Motte is proved, in conversation with Ratcliffe, to have spoken of some of the earlier packets having gone in time, and some of the latter having been delayed. What these earlier packets were, we have not a tittle of evidence about. The learned gentleman, in his opening, said this correspondence had gone on for some time, and that Mr. Ratcliffe, supposed to be struck with a qualm of conscience, of which Ratcliffe gave no evidence, applied to Mr. Stewart.

That the letter now in question, was not a part of what was first sent, is clear. That it is not among those which were last and latterly sent, is equally clear. It seems to me to stand about midway, as far as we can judge, from the evidence of those packets which Ratcliffe received, and which he disposed of in the manner your lordships have heard. There is another way of proving these were not among the letters that were the subject of that conversation; for in that conversation, De la Motte complained of the delay which rendered the latter packets useless. This does not apply to this packet; for it underwent, by the intervention mentioned, a delay of two days; therefore, as far as one can judge from the evidence, this packet is excluded; however, it is enough for me, that the evidence does not

apply to prove this to be a packet received by the witness from M. De la Motte.

The ground upon which it is attempted to be sustained, is, that, although it be not the original, yet, being a copy, it is to be received; because a copy, say the gentlemen, under the circumstances of this case, is as good as the original; and for the purpose of sustaining that argument, they assume that this is an authenticated copy; which we deny. Sir Stanier Porten says, that a letter of this date he copied; but where did that letter come from? It came from Stewart. Stewart told the court, that what letters he gave sir Stanier Porten, he received from Ratcliffe, in this instance, with his own hands. Roger speaks of a letter, which he two days before received from Waltrond, of which letter De la Motte knew nothing; of which letter he was the possessor during these two days; but that at the time when De la Motte was sending by Ratcliffe two boxes, one containing prints, and nothing but prints, the other containing the model of a gun, and nothing but the model of a gun, he says he put into the hands of Ratcliffe a packet, which he, Roger, had received two days before from Waltrond; so that the receipt of a single packet from De la Motte is absolutely excluded, if Roger speaks truth: but your lordships will not, in deciding this question, decide which of the witnesses speak truth, which is undoubtedly the province of the jury. Taking every tittle Ratcliffe has said to be correctly true, the upshot he has said is, he either received this packet from De la Motte, or Waltrond, he cannot say which. If your lordships shall think, that an authenticated copy, under the circumstances of the case, is competent to be admitted in evidence, a link of the chain is wanting; and therefore upon that ground, I trust your lordships will reject this letter, No. 2.

Mr. Peckham. I will suppose, for a moment, that the paper produced is not a copy, but the original. Under these circumstances, can that original be given in evidence, to affect M. De la Motte? It turns upon a very plain and simple question: can a letter be given in evidence against the prisoner, which has not been proved to have been in his possession, or of his hand-writing? What is the evidence that has been given to prove that this was ever in the possession of De la Motte? Sir Stanier Porten says, that the copy he now produces (I will call it the original) was received by him from Stewart. Mr. Stewart swears that he received that identical letter from Ratcliffe: but here the chain is broken; for Ratcliffe says, that he either received it from Roger, or from Waltrond, which of them he cannot tell; but he positively says he did not receive it from De la Motte. Is Waltrond here, to say that the letter he gave Ratcliffe was the letter he received from De la Motte? No. Mr. Roger is here: has he said that the letter he gave Ratcliffe was received from De la Motte?

No; precisely the contrary. Roger swears that he never gave any letter to Ratcliffe, which he had received from De la Motte: Ratcliffe says he never saw De la Motte but once, which was at Roger's; and at that time, by the evidence of Ratcliffe himself, as well as by the evidence of Roger, De la Motte had not the letter in his possession: instead of evidence that De la Motte gave this letter to Ratcliffe, there is the evidence of Ratcliffe that he did not; which is confirmed by the testimony of Roger. I am ready to acknowledge that Ratcliffe insinuated, that Roger went up stairs for the letter, by order of M. De la Motte; but that very witness has positively sworn (and he is stamped with credit by the high authority which has called him) that the letter which he gave to Ratcliffe, he had received two days before from Waltrond.

I conceive that the first thing to be disposed of is, Whether, taking this as the original, it could be given in evidence against M. De la Motte, when there is evidence before the Court, that the letter did not come from him, but from another? When your lordships shall be of opinion, that the original could be given in evidence, it will be time enough for me to object to the production of the copy; as the original has confessedly been in the hands of government, and is not destroyed.

Mr. Attorney General. Mr. Peckham says, that Mr. Ratcliffe is contradicted by Mr. Roger in the circumstance of De la Motte's ordering the packet to be brought down. Your lordships will recollect, that is the very last packet Ratcliffe took, which was in the month of December; it is totally a different time. Our producing Roger is not, as the Court sees, because he is a witness of high credit, but to connect the business with them. It is with the jury entirely what credit they will give to the witnesses that are produced; and so will be the letter, when it is received; but in my opinion, the ground upon which it is to be received is with the jury still, and they must decide that point. Mr. Ratcliffe has repeatedly sworn, he never received any from De la Motte, (but that is not the question here) all he received were from Roger. Then who did Roger receive them from? He says, I received sometimes the packets from Waltrond, and sometimes from the prisoner; he added farther, that he received pay from both of them. This certainly is evidence; not of a partnership in trade, as it is called, but, in the language of the law, of a conspiracy between these people to give intelligence to the French: and whether one delivered the packet to Roger, or the other, appears to be quite immaterial: each of them gave Roger the money to pay to Ratcliffe; and that he has been paid himself the wages indifferently by both of them. Then is not this a fact for the jury to determine, whether these two men were not carrying on the same

conspiracy together, in giving intelligence to the French? and the witness speaks of them in that light; that it made no difference whether he received it from one or the other. It is upon that ground that we debate the question before your lordships, as to the copy. If the question as to the copy is determined against us, then I mean to submit to your lordships, whether the contents, from the memory of the person who read the originals, is not to be admitted in evidence.

Court. It seems as if the prisoner and Waltrond were in a conspiracy together (and that is a fact for the consideration of the jury) to send intelligence to the French; but the intelligence which was sent must be laid before the Court by legal evidence. The question now for us to give our opinions upon, is, Whether the copies which are produced, marked No. 2 and 3, are evidence admissible in this case? With respect to these two letters, they are proved to have been delivered by Ratcliffe to Stewart, and by Stewart to sir Stanyer Porten, and copied by him. But the chasm is between the delivery of the letter from the prisoner, or from Waltrond (if the fact were so) to Ratcliffe; for, as the case stands now, there is no evidence to shew how these two letters, which were brought to the secretary of state's office in July, came to the hands of Ratcliffe; and, unless there be some evidence to prove that these two letters, which afterwards came into the hands of sir Stanyer Porten, and by him were copied, were delivered to Ratcliffe by the prisoner, or by Waltrond, or some person sent or employed by them, in my opinion, they ought not to be received. The case upon the evidence is clear, as to the condition of the papers, and what became of them from the time they got into the hands of Ratcliffe. He certainly did not mention any particular time when he first began to receive letters or packets from Roger; nor does he say that he delivered any papers whatever that were received from him in the month of July. The copies can be evidence only in one of two ways; namely, that from a date prior to the time these letters got into the hands of Stewart, Ratcliffe delivered all the packets generally to Stewart which he received from Roger, and no others; or by saying pointedly, that he received from Roger this packet dated in the month of July, which he afterwards delivered to Stewart. Neither of these things are proved; and unless one of them were proved, I think it impossible to receive these copies in evidence.*

* In East's Pleas of the Crown, chap. 2, s. 58, it is said, "In the case of De la Motte, O. B. July, 1781, on suspicion of the traitorous correspondence which he was carrying on with the French government, then at war with this country, the packets were secretly opened, copies taken of their contents, and they were afterwards sealed again and forwarded to their place of destination. Persons who knew the prisoner's handwriting proved that the original letters were written by him, and the copies being proved to have been examined were admitted in evidence:" and the authority cited for this representation is *MS. Gould, J.*

Charles Jellous sworn.

Examined by Mr. Howarth.

Did you apprehend the prisoner De la Motte?—I was one of the persons who did apprehend him.

Where did you apprehend him?—At one Mr. Otley's, in Bond-street, on the 5th of last January; it might be between the hours of six and eight in the evening.

How long had you been waiting for him?—We went in the morning, on the 4th, between the hours of ten and eleven. We waited all that time. His own servant was with us.

He had not been at home the preceding night?—No; he did not come home all night.

Describe the manner in which you apprehended him, and the circumstances attending it.—Between the hours of seven and eight o'clock there was a double rap at the door: the servant said, "I believe that is my master: I will go down stairs." I said, "No; do not go down by yourself." Mr. Prothero went down along with him. He opened the door, and let his master, M. De la Motte, in. When his master came as far as the stairs, the servant said something to him, but what I can't tell: immediately he turned upon his heel, and went as if he was going to get out again.

Did the servant speak to him in French or English?—I cannot tell. Mr. Prothero laid hold of him immediately, and told him he should go up stairs. Prothero desired I would assist him: I likewise got hold of him; and while we were together, M. De la Motte threw some papers out of his waistcoat pocket upon the stairs. I picked them up, and afterwards delivered them to Mr. Chamberlayne. We brought him up stairs. I wanted to search his pockets. He would not let us. Prothero laid hold of him by the collar, and kicked up his heels; and while he had him down, I searched his pockets. I found some other papers in his pockets, which I also delivered to Mr. Chamberlayne.

All the papers you found you delivered to Mr. Chamberlayne?—Yes; I did.

Cross-examined by Mr. Dunning.

Bank-notes and all?—No; there was a 10*l.* bank-note, and he had it back again.

He threw out a bank-note?—He did.

And you gave it him?—Yes.

That was very good. I hope you will always copy that example.—I hope I shall.

How many papers were there that you did not give back?—I believe there might be seven: he tore one to pieces.

ters were written by him, and the copies being proved to have been examined were admitted in evidence:" and the authority cited for this representation is *MS. Gould, J.*

Did you read them, and know what they were about?—I believe I could tell the particulars: there was something about a ship called the Egmont. One he tore to pieces: but it was of no use; there was nothing upon it.

William Chamberlayne, esq. sworn.

Mr. Chamberlayne. These papers (producing them) I received from Jellous: they have been in my custody ever since.

PAPERS (produced by Jellous) which were read in court.

N^o I.

At Spithead.

Diligente—Guard-ship, at present ordered to receive Dutch prisoners.

Britannia, Victory, Prince George, Ocean, Queen—Completing provision for six months, and will be ready for sea in ten days.

Duke—In fourteen days.

Formidable—Under no order at present.

Alexander, Cumberland, Defence—Provision for six months, and fit for sea in ten days.

Dublin—Under orders for Plymouth.

Fortitude, Nonesuch—Completing six months provision, ready in eight days.

Inflexible—Under orders for the Downs.

Monmouth—One of commodore Johnston's squadron, eight months provision.

St. Alban's—Completing six months provision, ready in seven days.

Buffalo—Ordered to the Downs.

Jupiter, Jason—Commodore Johnston's squadron, eight months provision.

Flora, Monsieur, Emerald, Alarm—Under no particular orders, ready for sea.

Active—To go with commodore Johnston, eight months provision.

Oiseau—Wants a new main-mast, ready in eight days.

Mercury—To go with commodore Johnston, eight months provision.

Solebay—Fitted for foreign service.

Vestal—Fitted for Channel service.

Pegasus—Fitted for foreign service, ready for sea.

Ranger—Wants a mast, and returned from sir Samuel Hood's squadron.

Shark—Commodore Johnston's squadron, eight months provision.

Alert—Just arrived from Jamaica, last from Ireland.

Infernal, Lark, Romney—Commodore Johnston's squadron, eight months provision.

Satisfaction—Arrived from Ireland.

Lightning, Harpy, Firebrand—Under no particular orders, but supposed will go with the Gibraltar fleet.

In Portsmouth Harbour.

Union—Completing provision for six months, fit for sea in twelve days.

Magnificent—Ready for dock.

Elizabeth—Paid off; ship's company turned over to the Monmouth.

Raisonné—Paid off; ship's company turned over to the Repulse.

Repulse, 64—Will be ready in fourteen days.

Lion—Ready in fourteen days, completing provisions for six months.

La Fortune, 44—Ready for dock.

La Nymphé, 44—Is to go with commodore Johnston, if she can be got ready in time.

Diana—Commodore Johnston, ready in four days.

Fox—Fitted for Channel service; is to convoy the trade to Ireland.

Warspight, Dragon—Fitted to receive new raised men brought from different parts, but has no recruits.

Lioness, Mars—Hospital ships to receive recovered men from the hospitals.

Courageux, Valiant—On a cruize.

Marlborough, Bellona—In the Downs.

Foudroyant, Bienfaisant—At Plymouth.

Canada, Edgar, Warwick—On a cruize.

Princess Amelia, Yarmouth, Berwick, Sultan, Blenheim, Conqueror, Hero, Kent, Arrogant, Royal George, Namur, Prince of Wales.

I don't see in my list the Princess Amelia—my friend must have overlooked her.

N^o II.

Thunderer, Stirling Castle, Scarborough—Missing, and given over for lost, as there has not been the least heard of them.

Phoenix, Victor, Barbadoes—The vessels lost, with every thing but the men, and 70 of them are missing.

Ramillies, Southampton, Pallas, Pelican, Jamaica, Tobago—Cruizing to windward of Jamaica, all well.

Albion, Diamond, Janus, Porcupine—These ships are fit for sea, at Jamaica.

The Princess Royal was along-side the wharf at Jamaica, in order to be cleaned.

Gibraltar.

The fleet destined for Gibraltar, it is said, is to consist of 18 sail of the line, and to take six months provision, and to be got ready with all possible expedition: what the rest of the ships are, and when they will sail, is at present unknown.

Commodore Johnston's Squadron.

Romney, Monmouth, Jupiter, Jason, Diana, Active, Mercury, Shark sloop, Lark cutter, Infernal—Victualled for eight months; are to take two regiments, namely, Humberston's and Fullarton's regiments, consisting of 1,000 men each regiment; and to take a number of artillery: but when they sail, and on what service, is a profound secret. Commodore Johnston has been sent for to London, where he is at present.

What ships are going with sir Hugh Palliser is not known, but hear he is to hoist his flag on board the Hero, which is expected here from Plymouth every hour.

The Foudroyant and Bienfaisant, at Plymouth; the Canada, Edgar, and Warwick, are still on their cruize; the Canada was seen in distress; the Minerva, in the Downs, to convoy the bishop of Osnabrugh to Germany. The Alert has brought the under-mentioned authentic account from Jamaica.

Ruby, Grafton — All their quarter-deck guns thrown overboard.

Hector—All her guns thrown overboard except two.

Trident—None, or little damaged.

Bristol—All her quarter-deck guns thrown overboard.

Egmont—All dismasted, and received other considerable damages.

Endymion, Ulysses, Pomona, Resource, Hinchinbrook, Leostoff, Endeavour, Badger—Have received no damages but what may be repaired in fourteen days time; but were, as they were, unfit to go to sea.

N° IV.

Sir; Your favour of the 2d instant, I received yesterday, and make no doubt of the bill on Mr. Brurker being duly honoured. I take the liberty of inclosing a frank for me. I am, Sir, your very humble servant,

HENRY LUTTERLOH.

Wickham, June 4, 1780.

Mr. John Theed, jun. Philpot-lane, City, London.

In the above was inclosed a frank,
Capt. Lutterloh, Wickham, Hants.
Free, H. Scott.

N° V.

Dear Madam : You will much oblige me to send me a few of the undermentioned (address) franks. I recommended another gentleman to you, hope you find him a good customer: if you should change your habitation, beg you will let me know your abode; whatever I may owe you for franks, be so good as to put it into my cousin's bill, who will pay you. Gretham begs to be remembered; and I am, with wishing you the compliments of the season, dear madam, your very humble servant,

HENRY LUTTERLOH.

Wickham, Jan. 4, 1781.

Direction for the franks,

Mr. John Theed, jun. Philpot-lane, London.

P. S. Pray what is the best sealing-wax per pound?

Mrs. Wall, Little Carrington-street,
May-fair.

(There was another paper, which was only a bill for entertainment at the Bush-inn, Farnham.)

N° III.
HASLAR HOSPITAL, } Weekly Account of Sick and Wounded Seamen, &c.
30th Dec. 1780.

Classes of People.	Number of each Class.	Whereof					Since last Account.				Quarters unfill'd.	The most reigning Disorders at this Time.
		In the Hospital.		Very ill.	Not dangerously ill.	On Recovery.	Discharged.			Run.		
							Cured.	Not cured.	Received			
Seamen -	1096	1069	27	369	377	350	73	18	297			
Marines -	473	469	4	159	153	161	42	2	132			

THOMAS HOLDEN.

Fevers and Consumptions.
Lame, hurt, and weak in the Scurvy.

Mr. Peckham. I see the name of Mrs. Wall in this paper [No. 5]: is she here?

Mr. Chamberlayne. She is not here.

Mr. Peckham. Who is she?—A. I really do not know. I only know, that I have had a letter put into my hands, which they told me was wrote by Mrs. Wall. She said she had been at the Tower, and was afraid she should be subpoenaed against M. De la Motte, and she determined to keep out of the way.

Mr. Dunning. The simple question was, What is this woman? where does she live? does she sell newspapers?—A. All that I know about her is, she keeps a little pamphlet shop; and I sent after her, in order to have her subpoenaed; and with great difficulty, my messenger told me he had subpoenaed her.

Mr. Dunning. One is a letter addressed to Mrs. Wall: it is natural for us to desire to know who she is.—A. I must give you hearsay evidence if I say any thing about her.

Mr. Dunning. If you say you know nothing of her, that is an answer.—A. I know nothing of her.

Mr. Peckham. But only that she keeps a pamphlet shop?—A. I don't know that.

Matthew Slater sworn.

Examined by Mr. Howorth.

Did you, in consequence of any direction given you, go down to the house of one Mr. Lutterloh, at Wickham in Hampshire?—Yes; with a warrant from my lord Hillsborough.

On what day did you go?—On the 5th of January.

Did you then apprehend Lutterloh?—I did.

Did you go, at any other time, down to Wickham to search for papers?—Yes.

When was that?—On the 16th of January.

Did you find any papers?—Yes.

Where were they?—They were buried in Mr. Lutterloh's garden.

What did you do with those papers?—I brought them to sir Stanyer Porten, at lord Hillsborough's office, and delivered them to Mr. Chamberlayne.

Cross-examined by Mr. Dunning.

You did not know what the papers were, nor how many there were of them?—I do not know the contents of any of them.

Mr. Peckham. Did you yourself take up the bundle?—A. I took them up from the garden.

Who dug the ground up?—I did; I had a direction from Mr. Lutterloh where they were, and I went and dug them up.

Henry Lutterloh sworn.

Examined by Mr. Attorney General,

Do you know M. De la Motte?—Yes, I do. How long have you known him?—Ever since the year 1778.

Have you had any connection with him?—Yes.

In what way?—To procure intelligence regarding the fleet.

Where did you reside then?—First at Portsmouth, afterwards at Wickham.

Where did M. De la Motte reside at that time?—In London.

Do you know where his lodgings were then?—In Wardour-street, by Prince's-street.

Did he change his lodgings during your acquaintance with him?—Yes, he did; he went to Hampstead.

Where did he go to lodge in London in the winter?—To N° 1, Old Burlington-street.

Did he lodge at any other place?—In Bond-street.

Whom did he lodge with there?—A Mr. Otley.

What was the purpose of your getting this intelligence for him? Did he communicate the purpose to you?—He told me it was for the ministry of France.

Did you make any terms with him?—Yes, I did.

What were your terms?—At the beginning of our acquaintance, he paid me eight guineas a month, and my salary soon came to fifty guineas a month, besides many valuable presents.

Did you occasionally come up to town to him from Wickham?—Very often.

Did you bring or send your intelligence about the fleets?—If there was any thing extraordinary, I came post to town.

Otherwise, how did you send your intelligence?—By the post, or the diligence.

How long were you in this employment?—From the year 1778 till I was apprehended.

Were you in the regular course of transmitting intelligence from Portsmouth?—Yes, I was.

What kind of intelligence did you send him?—Every thing concerning the fleet, and what intelligence I was able to procure.

Before you were apprehended, was M. De la Motte at your house?—Yes, he was.

(Some of the Papers found upon M. De la Motte shewn the Prisoner.)

Lutterloh. No. 1, is my hand-writing; No. 2, is my hand-writing too; No. 3 is out of the Admiralty-office.

Where?—At Portsmouth.

Who procured it?—A person in the office.

Whom did you deliver them to?—Into his own hands.

Is that your direction to Mr. Theed?—It is.

Whom did you give that letter to?—M. De la Motte, with a request to send it to my banker to send me some cash.

Were any papers concealed in or near your house at the time you were apprehended?—In my garden.

Should you know them again if I shew them to you?—Yes.

Court. Look at the latter end of that: it is written in a different way from the rest of your hand-writing.—It is.

Is it not different ink?—Yes; but the whole paper is my writing; it was written as we were sitting talking together.

Attorney General. You had, at the time you were apprehended, papers concealed in your garden: do you mean under ground?—

A. Yes.

Did you direct any person, after your apprehension, where to find them?—I directed a king's messenger.

Look at these (shewing the witness the papers).—This is the prisoner's writing: it was one of the concealed papers: it is marked No. 7. There is another of De la Motte's hand-writing: it is No. 8.

Was that one of the concealed papers?—I am not clear whether it was or not; but if it was found there, I certainly put it there. No. 9 is De la Motte's hand-writing; so is No. 10: No. 11 is De la Motte's hand-writing; No. 12 the same: No. 13, No. 14, No. 15, and No. 16, are De la Motte's writing.

What is this paper? (No. 7.)—My instructions, which I received from M. De la Motte himself; it is instructions that I should procure two boats, and if there was any thing very material, to send my intelligence by these two boats; one to Brest, and the other to Cadiz in Spain.

Does this relate to commodore Johnstone's squadron?—Yes, it does so.

What is No. 8?—That was a letter which I was to send with them to Brest.

But it is all blank, you see.—I was to fill it up with proper names: the paper is De la Motte's writing. No. 9 was to the commandant at Ouessant, which is a sea port town in France: if my cutters were not able from the wind to get into Brest, they were to go to Ouessant.

Were you to inclose the intelligence you sent in that cover?—Yes.

What are those two seals?—They are M. De la Motte's own seals: he sealed them in my presence; his seal was known in France. No. 10 is a direction to the commandant at Cadiz in Spain; there is a direction to go to the French ambassador's at Lisbon. No. 11 is a letter directed to the commandant at Brest, which I was to send in my inclosure, and the governor was to give for this a receipt to my cutter. No. 12 is likewise the prisoner's hand-writing; it was either to be given to the commandant in Brest, as the cutter could get in, or at Ouessant. No. 13 is to the same purpose. No. 14 for the same purpose. No. 15 was for the minister of the marine, the admiralty, in Paris. No. 16 is the same as the others, except No. 15. No. 17 is M. De la Motte's writing; it is a note for 121*l.* for the business I transacted, which I have been speaking of. M. De la Motte has paid it to my banker under the name of capt. Toomey. This No. 18 is M. De la Motte's hand-writing; it is a letter I received from him.

There is something about coals in it. Have

you any coal trade between you?—None at all; that was fictitious.

As you have no coal trade, it must relate to something. What did you mean by it?—I don't recollect now; I know we had no coal trade between us.

Solicitor General. Nor did it mean coals?—It did not.

There is 30*l.* or something, mentioned in it?—No; 35*l.* he sent me.

What for?—Those services. No. 19 is M. De la Motte's hand-writing. No. 20 is also M. De la Motte's writing.

Cross-examined by Mr. Dunning.

Mr. Dunning. Does it happen to be known to you that at Portsmouth and Plymouth, and, I believe, at every other sea-port, there are stationed collectors of news for the London newspapers, who transmit their intelligence every week, or post?—A. No, it is not very particularly; I know that there are people that do such things.

There are people in the employ of the news-writers who collect intelligence of what is passing at the several sea-ports, and send the news to London?—I can only answer that by hearsay, I know of no such people.

Have you never been one yourself?

Lutterloh. A news-paper!

Mr. Dunning. No, not a news-paper, but a man who writes such stuff as we see every day in the news-papers?—No.

Am I to understand that those that you say are M. De la Motte's hand-writing were written by him in your presence?—No.

Which were written in your presence?—The direction to Cadiz, the franks, &c.

Now cull out those that you will swear were written by him in your presence, and as to the other you speak from the knowledge you have of his hand-writing from seeing him write that?—I am most certain; most sure.

Your being most certain, and most sure, will not make any body else, I believe, most certain or most sure; but choose them out, and inform the Court of the grounds of your belief.—No. 11 was wrote in my presence; that is a letter to the commandant at Brest.

Does it say at Brest?—No; "Mons. Commandant." All these covers, 12, 13, 14, 15, and 16, were written in my presence.

Are those, then, all that were written in your presence?—Yes; and the instructions, No. 7, were written in my presence. I do not positively remember whether No. 8 was wrote in my presence.

Are we got now to the end of those that were written in your presence?—No. 9 is a direction, and was written in my presence; and so was No. 10, and there is a letter to the governor of Brest, No. 11, directed "To Mons. Commandant;" and there is a letter inside.

Attorney General. Where were those written that were written in your presence?—A. At my house.

Mr. *Dunning*. Then all that were written in your presence were directions?—A. A letter to the commandant of Brest.

Court. And No. 15, which is a letter to the Admiralty.

Mr. *Dunning*. Can you either read or write French?—A. Very imperfectly.

Then your recollection is not at all assisted as to what you saw written in your presence, by the contents of the papers?—Yes, I know the contents, what the papers mean.

You know I am now distinguishing what was written in your presence, and what you suppose to be M. De la Motte's from the general knowledge of his writing?—He explained them very properly to me in English.

He put these papers into your own hands, and translated them into English?—He explained them in English to me.

Where and when?—First at his house in Bond-street. He wrote these large instructions, and gave them to me when he came down to Wickham, at my house.

The covers were written in Bond-street?—Yes; the instructions and two or three small covers were wrote at my house at Wickham.

Where was the letter to the commandant written?—In Bond-street.

Then all that was written at Wickham was the instructions and some small franks?—Yes.

The large franks and the letter having been written in Bond-street?—Yes.

How long ago might it be that this first writing was in Bond-street?—I cannot be exact: but, I presume, in last November.

And when at Wickham?—The day before M. De la Motte was apprehended.

That was in January?—Yes.

Then the first time you saw him write, if I understand it, was in Bond-street, in the month of November; and the last time was in January, at Wickham?—I am not clear whether it was in November, or the month before.

But whether it was in November or October, that was the first?—Yes.

Only that we may understand one another correctly, and may not suppose by and by that we are mistaken; you say the first time you saw him write was in Bond-street in November, and the last time was in January at Wickham?—That is what I mean.

Then the occasion of so much verbal instruction took its rise from an opinion in M. De la Motte that you could not read the written instructions?—Certainly.

How happened it then that these important instructions, which were drawn up as an instrument, and called 'Instructions for your conduct,' were left with you in a language which you did not understand?—Because my friend understood it.

Did nobody that you conversed with upon this subject understand English?—I only conversed with M. De la Motte.

It never was imparted by you to any body whatever. What he intrusted you with, paid you for doing, and what you were to do, all remained a secret, and never was imparted by you to any third person whatever?—There was a particular agreement between us not to betray one another in case we were apprehended.

So, in consequence of this, you kept true faith with M. De la Motte; and never conversed about this with any creature whatever?—Not by M. De la Motte's order, but by my own inclination.

You kept it an inviolable secret in your own bosom?—I do not keep it a secret in my own bosom.

To whom did you impart it?—Sir Hugh Palliser.

A very proper confident! Why did not you tell me this before?—I never mentioned De la Motte's name to sir Hugh Palliser, only the subject.

You imparted to him the whole of the subject, without naming the man. Do you conceive that to be perfectly consistent with having given me again and again for answer, that it was an inviolable secret between you two, and no third man to be acquainted with it?—I said so, only to sir Hugh Palliser.

When did you impart this to sir Hugh Palliser?—After I had settled the plan with the ministry of France. I went to Paris; the ministry of France wished to take commodore Johnston's squadron; I laid them the plan how to take it; they agreed in every respect. I asked 3,000 guineas for a friend of mine, who would procure me all necessary intelligence, as likewise the third part of every ship that should be taken; that was done by M. De la Motte's desire. The French ministry would not agree to a third part; they agreed to give me 3,000*l.* and 2,000*l.* a year to my friend, which I said I had in the Admiralty.

Who was this friend in the Admiralty; not sir Hugh Palliser, I hope?—It was an imaginary friend: it was a plan of my own making.

You are a dextrous hand at making plans, I perceive. Then you made a plan, and invented a lord of the Admiralty, and went to the French ministry? Be so good as tell me which of the French ministers had the honour of your conversation?—I came to M. de la Motte, and told him. He had very often pressed me much, to know if there was no possibility of getting at the private signals, and taking the fleet. I told him I thought there was a possibility of taking the fleet, and he seemed extremely pleased: he gave me a letter to the prime secretary to the ministry at France, that what I should say were facts. I delivered my letter to the secretary to the French ministry, who seemed likewise pleased, but did not wish to give me a third part of every vessel. I returned to England, and M. De la Motte went instantly to Paris, and settled a plan, that they should give 3,000*l.* and that an eighth part of every ship should be

parted between De la Motte, me, and my friends: after this, De la Motte had these franks. I had at this time made a substantial fortune, and regretted that I was employed in such a business as I was. In consequence of that, I went to sir Hugh Palliser, and told him of the whole transaction; and made him a plan, that instead of the French taking the English fleet, the English should take the French fleet.

See if I understand you: you first settled a plan with De la Motte, by which commodore Johnstone and his fleet were to be taken; and, when they were taken, they were to be divided between you, De la Motte, and your friend?—Not divided; only an eighth part of it divided.

Then you were to have an eighth part for yourself, for M. de la Motte, and for your friend? Be so good as tell me who this friend was. You said, this moment, it was an imaginary thing?—So it is.

Then the meaning is, you are to settle a plan with M. de la Motte, and cheat him of a partition of the plunder you were to have, for your imaginary friend? Was it but one imaginary friend you had?—Only one that I employed in that business.

How many imaginary friends were there to have shared in the plunder?—Only we three.

That makes five of you; you, M. de la Motte, and three imaginary friends.—If you can make five out of three, I cannot. I wished to give up the business in which I was employed: I wished likewise to render myself serviceable to England.

So you entered into this conspiracy originally, did you, with a view to make yourself serviceable to England?—No, not with that view, but because I was in necessity.

So you entered into this conspiracy with a view to destroy England?—And enrich myself.

But by hurting England?—Certainly: how could I do otherwise.

I want England to know her benefactors. You entered into this conspiracy with a view to destroy England, and enrich yourself. Having enriched yourself, be so good as tell us what was the plan you and sir Hugh Palliser had concerted to serve England?—I went to sir Hugh Palliser, and told him I had perfectly settled a plan with the ministry of France.

Tell me when you went to sir Hugh?—I suppose in the month of November.

I thought you told me August just now.—No; I believe it was in November: it was in August I went to France. I went to sir Hugh Palliser, and told him the ministry of France intended to take the fleet; that I had made a plan how and in what manner they might take it, and they had perfect confidence in what I said. I then made sir Hugh Palliser a plan how it was possible, in case the French took this English fleet, that the English should take the French fleet. I begged of sir

Hugh, at the same time, that he would not ask me the name of my partner, M. de la Motte, because I did not come to inform against a person with whom I lived on friendly terms; I only requested that my name might be kept a secret, and my friend not hurt.

Which of the fleets of France was it that was to be destroyed by this conjunction between you and sir Hugh Palliser?—Sir Hugh Palliser was to go to the minister, and inform him of my plan; which he has done.

Then you, sir Hugh Palliser, and the ministry, are all together. I only want to know what it was you were to do for the annoyance of France. I understand that a recollection of your opulence, and a little qualm of conscience, carried you to sir Hugh Palliser, for the sake of turning the tables upon the French; and, instead of doing them a service, you meant to do them a mischief?—Yes.

What was the mischief you intended them?—To take the fleet of France.

What! all of them?—No, the fleet that was to come out to take governor Johnstone were to be taken, by sending out more men of war in a secret manner.

I hope it was done?—It was not, I wish it had; there happened to be a mistake; I went out of town, and sir Stanyer Porten was sent by lord Hillsborough to converse with me upon this subject.

When so many wise heads got together, I wonder how this scheme failed!—If you had been there, it might have been better perhaps.

I am afraid we shall make it a little worse before we have done.—I am very willing to answer your questions.

You certainly shall; so don't make that a matter of compliment. Do you recollect going to present the bill to the grand jury against M. De la Motte?—I do.

Do you remember what you said to any person when you came out from the grand jury upon the subject of M. De la Motte?—I don't recollect.

Mr. Attorney General. If Roger is present, let him go out of court.

(Roger is sent out of court.)

Mr. Dunning. Do you recollect saying any thing at all to any body about M. De la Motte?—I may have done so. I do not recollect it perfectly.

Now I will see if I can help your recollection. Did not you tell somebody, that "M. De la Motte was a man of fortune, and you would have a slice of it before it should be over?"—I did not say any such thing.

Did not you say, "the grand jury have not sufficient proof before them; but I will furnish them with enough to find the bill. This man is rich, and I must make an advantage of it: and it will be a fine thing for me?"—I never said such a thing in my life.

You said no part of it?—I have said that M. De la Motte is a man of fortune; I have mentioned that to the ministers.

That was not with a view to invite them to a share of the plunder, I hope?—No.

But did you say this to any person you thought might be tempted to join with you in it? did you say it to Roger?—He knew he was a man of fortune as well as me.

What was the reason of telling it to him then?—When people dine together, they are capable to speak: I believe I may have told him he was a man of fortune.

Did you tell him the grand jury had not sufficient evidence to find the bill?—Just the contrary.

What do you mean by just the contrary?—I told him I was clear that M. De la Motte was guilty of high treason.

Now do you understand that this is just the contrary of the words that I have read to you, the grand jury not having sufficient evidence before them? Do you think the contrary of that is, I know M. De la Motte is guilty of high treason? Did you say any thing about the grand jury?—I do not recollect that I said a single word about it.

Did you say any thing about finding the bill?—I did; that I would lay a wager they would find the bill. Roger said he thought they would not.

Did you ever say that they had not evidence enough to find the bill without you?—Never in my life.

Did you ever say you would furnish them with evidence enough to find the bill?—Never in my life.

Did you ever say, this man is rich, and I must make an advantage of it?—Never in my life.

Did you ever say, it will be a fine thing for me?—Never.

Did you say to Roger, that you should make profit or advantage of M. De la Motte by this prosecution?—By no means whatever.

While you were poor, you grew rich by joining De la Motte in schemes of assisting France against England: when you got rich, you intended to grow still richer by assisting England in schemes against France. Now you are sufficiently rich you purpose to go back again, I hope, to your own country, if the justice of this country will let you. How do you live now?—Upon my fortune.

And this is a fortune acquired by the means you mention?—By the hands of De la Motte and the ministry of France.

M. De la Motte and the ministry of France have made you a rich man?—They have.

What country had the honour of producing you?—Germany.

What part?—Brunswick.

How long have you honoured England with your residence?—Several years.

How many?—I cannot be positive: may be 15 or 16.

Where did you live when you first came to England? because, as we have had M. De la Motte's history, let us have a little of yours. —I was an officer last war in Germany.

I am asking you where you have lived, and what you have been in England?—I came over here to see an uncle of mine, in the character of an ambassador here. There is Mr. Chamberlayne, who can witness it.

I believe not. Don't be quite so frequent in your appeals to Mr. Chamberlayne; for, I take it, he would attest the contrary. What became of you?—I was sent to Winchester, to learn English, to one Mr. Taylor, whom I believe you know perfectly well.

I have not the honour to know Mr. Taylor; but, whoever he might be, you went there to learn English. What did you do after that?—I married his daughter.

How long since?—Fifteen years ago, soon after I came to England; and by doing so, I disobliterated all my relations, who would know nothing of me, by marrying a woman without fortune and family. Then I came to town.

Where did you live then?—I spent what little money I had, and then went to an office by Charing-cross. I applied for a place to a gentleman, one captain Phillips, I lived with him I cannot tell how long, I suppose a twelvemonth. He had an ill state of health.

He is dead, I take for granted?—He then sent me, with a great character, to Mr. Wildman, in Lincoln's-inn-fields, with whom I lived about a twelvemonth.

Did Mr. Wildman send you away with a great character?—He was more like a friend to me than a master. He said one morning, "I want a livery-servant: I suppose that will not suit you." I said, "I cannot think of wearing a livery." Then he said, "I should be glad if you would get another place." I left Mr. Wildman, and then lodged in Castle-street, Leicester-fields. Mr. Wildman told me he was very ready to render me any service. After I had left Mr. Wildman two months, he lent me 15*l.* upon my note, to set myself up in some business: and my father assisted me likewise with some money. I took a small shop in Castle-street, Leicester-fields, and there I lived a year, till my uncle saw I absolutely would live; then he took me into his hands; and he keeping a carriage, &c. he made me sign and accept a great many bills; which I very readily did.

What shop in Castle-street, Leicester-fields, did you keep?—I sold tea and sugar.

A chandler's shop?—No, not a tallow-chandler's.

Mr. Duaning. No, these are different sort of men.

Lutterloh. My uncle being very extravagant, he lost a great deal of money. I found myself much encumbered by those people whose bills I had accepted: I was obliged to go out of the kingdom, for fear of being arrested. I went to Germany, recruiting for government. I then returned to England.

When may this return to England have been, after your breaking in the chandler's shop?—I did not break in my chandler's

shop; it was on account of those bills my uncle made me accept.

About what time did you come again to England?—I cannot be positive to the time.

Do those things make no impression upon your memory? When you break, and run away, to avoid your creditors, and then come and face them again; cannot that be recollected?—In 1775 I came over: my friends persuaded me to go to the King's-bench, and be cleared by an act; the only way of getting rid of debts I had not contracted.

When that operation was performed, and you were a clear man, what became of you then?—I went into Germany, and recruited for the prince of Orange; by which I gained a pretty little sum. I then returned to England. My uncle by that time was gone to America. I came to England with intention of going to America likewise. I fell ill, and continued so for twelve months, which reduced me to great inconvenience. After I was better, I went to Portsmouth, just at the time when the king was there. I applied to one Mr. Fielding, who kept the George, the principal inn at Portsmouth, and told him I was in want of employ till the fleet sailed for America. He asked, if I had any body could give me a character? I told him, Yes; a very respectable tradesman in the town. He then made me book-keeper; to receive his money, keep his books, and write out his bills, during the time the king was there.

Do me the favour to tell me what was to carry you to America?—I intended to enter into the service.

What service?—The service of government here.

Then you entered into it at home, and was sent to America at government's expence, I hope?—No: a man that speaks different languages, perhaps, is more valuable than a mere carbineer.

Then government would be glad to send such a man?—They would have officers enough: they don't wish to send officers.

You meant, then, to go there, and see what you could make of your fortune?—That was what I intended to do.

Do you recollect proposing any project about going to America, or doing any thing in America to any body?—I don't know; I don't recollect.

Do you know a Mr. Rappel?—Very well.

Do you recollect any thing passing between him and you about going to America?—No.

Perhaps the name of the margrave of Anspach may bring it to your recollection?—No.

Perhaps the name of Dr. Franklin may?—No.

You recollect nothing about buying arms to be sent to America?—Yes, I do recollect that.

Be so good as to explain that?—It was an imaginary plan.

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So that, besides imaginary friends, when they are wanted, you have now and then an imaginary plan. Be so good as state this imaginary plan, that one may see whether it is better imagined than the other was.—I do not recollect it; your witness perhaps can tell it.

But do you anticipate him; inform us what that plan was that you bestowed the epithet of 'imaginary' upon. Why do you call it an imaginary plan?—Because there never was any reality in it.

In what?—In procuring arms.

What was the plan which you call imaginary?—I don't recollect the whole subject now, nor that we talked about arms.

About what arms?—I said there were several officers at Hamburg that sent all kinds of effects to America, and got a great deal of money; and that a great deal of money might be got by buying arms and sending to America.

To the Americans?—Yes.

What farther passed about it? Upon your oath, what was it that was to be done upon the subject of those arms, and of this conversation?—Nothing at all.

They were to be sent for nothing. Where were they to be sent?—No where; I had no arms.

But you were to buy arms at Hamburg?—I said, a great deal of money might be got by buying up some old arms.

And whole armies too, and a prince at the head of them. But why did you say all this to Mr. Rappel?—One is very apt to speak; one must speak something.

When people must speak something, they generally speak what means something, or means nothing.—Nothing at all.

So all this imaginary scheme turns out, instead of being an imaginary scheme, to be nothing. Nothing was ever proposed between you, by the one to the other, about conveying arms to America?—No, not that I recollect.

You will not be sure, will you?—I cannot be sure.

We had a little conversation about the manner in which you parted with Mr. Wildman?—Yes.

Mr. Wildman was so much your friend, that he lent you money?—Yes.

Did you carry from him as good a character as you brought with you to him?—I did.

And he gave you a character?—I did not want a character; for I was going to keep a shop. He told me he would give me a character.

Did he always continue to hold the same language to you?—He did not.

Did you ever apply to him for a character, and he refused it?—He did, after I was cleared by the act; it was a great while after.

Why?—He had heard I had accepted many bills, and was cleared by the act; that must have given him a bad opinion of me.

S C

Was that the grounds of his refusal?—It was.

Do me the favour to recollect, whether, at the time of your parting from Mr. Wildman, he had not his bureau broke open, and robbed of 80 or 90*l.*?—I remember it perfectly well; it was at his chambers in Lincoln's-inn.

But this happened to coincide very wonderfully at the time of your departure?—No; it happened several months before I left him.

So his refusing a character to you did not originate from any thing relative to that transaction, but from your having taken the benefit of an insolvent act?—That is my imagination.

Mr. *Att. Gen.* Whose hand-writing is that? (No. 22.)—That is M. De la Motte's.

There is some alteration of figures in it?—Yes.

Lutterloh. As the gentleman has said something about Mr. Wildman, and it is a delicate point to me, I should be obliged to him if he would be so good as call Mr. Wildman in.

Mr. *Dunning.* I will undertake to do you that favour.

Lutterloh. I shall be much obliged to you.

Mr. *George Randall* was sworn to interpret such of the exhibits produced, as were in the French language.

N^o VII. [Translation.]

"INSTRUCTIONS.

"When commodore Johnstone shall sail from Spithead, you will order your two smugglers to go straight to Ushant, or to Brest, and to deliver the letter which you shall give him; and on the receipt of it, he shall give the hour and the day that he shall have received it. If the wind, or other circumstances, will not permit the said smuggler to go straight to Ushant, or Brest, he will do his utmost to carry the letter to St. Maloe's; but Ushant, or Brest, are the port which he shall endeavour to make, and not think of St. Maloe's but upon a very extraordinary circumstance. The smuggler who shall go to Cadiz, will deliver the letter to the commandant of the marine at Cadiz, and shall take a receipt, from the said commandant, of the hour and of the day the letter shall be delivered. If the wind, or circumstances, shall hinder positively the said smuggler from going to Cadiz, he will do his utmost to make Ferrol, or Lisbon. If the said smuggler shall make Ferrol, he will deliver his letter to the commandant of the marine, and will take a receipt. If the said smuggler shall make Lisbon, he will go and carry the letter to Monsieur the ambassador of France, and will take a receipt; but it is to be observed positively, that the principal object is to go directly to Cadiz, and that Ferrol and Lisbon are only on the impossibility of going to Cadiz."

N^o. VIII. [Translation.]

"Sir; This. ——— day, ——— month,

——— hour, set sail from St. Helen's, Portsmouth, commodore Johnstone, with the following vessels, (then there are eight blanks) the wind being——.

"There are no other vessels ordered to follow him. I desire you to give a receipt, to the bearer, of the hour and of the day."

N^o XII. "To the commandant."

N^o XIII. The same.

N^o XIV. The same.

N^o XV. "To the minister of the marine at court,

N^o XVI. "To the commandant."

N^o XVII. "I promise to pay to Mr. Henry Lutterloh, on the 25th day of the present month, the sum of 121*l.* sterling, for the liquidation of the account between us, at London, this 14th of June, 1780."

N^o XXII.

"Four thousand guineas, ready money.

For a man of war of 50 guns, 2,000 guin.

For a man of war of 64 guns, 3,000 guin.

For a man of war of 74 guns, 4,000 guin.

For a man of war of 90 guns, 4,000 guin.

For me you must ask."

To *Lutterloh.* What is the meaning of the paper that has just been read?—When I had made M. De la Motte a plan for taking commodore Johnstone's fleet, I was with him in his closet, at his house in Bond-street. I asked him the terms I should ask the ministry of France: he told me 4,000 guineas, ready money, for the terms. Every man of war which was taken by my contrivance, my plan; for a 50 gun ship he made it 1,000 guineas, which I, when I came to Paris, altered to 2,000; for every 64 gun ship that was taken by our plan, 3,000 guineas; for every 74 gun ship 4,000, and a 90 gun ship the same; and frigates in proportion.

What are these words at the bottom, "For me you must ask?"—I should ask a larger sum, which I was to pay to M. De la Motte; he left the agreement entirely to me.

Was De la Motte in France with you at the time?—I was once with him in Calais, and once with him in Paris.

Did you go to any person in Paris together?—I delivered the dispatches, when I came there, to M. De la Motte, and requested him to introduce me to the minister, which he did.

What minister?—Monsieur Sartine, the minister of the marine.

Att. Gen. Now, my lord, we'll read the letters from De la Motte to Lutterloh, to show the connection between them.

N^o XVIII.

"London, Monday Dec. 14, 1779.

"I inclose you the sum of 55*l.* which makes up the quarter for your children, and likewise the six guineas you have advanced for Mr. T. Garison, and I remain to owe you 2*l.* 4*s.* which I will place to the future account. In my coal trade it is absolutely necessary I

should know how much coals are put into each ship of war and transport, from Portsmouth. Don't lose any time to demand every particular about this article; and let me know, as soon as you have informed yourself, as it is a speculation I may gain much profit by. I hope you have received the last parcel I sent you by Mrs. W——. I wish you all happiness, and believe me yours,

"F. ALDEMAN,"

N° XIX.

"My Dear Cousin; I send you to-morrow, (Monday) by the stage, 35*l*. the sum of your account: it is the fault of Mr. V. that you have not received it sooner. I don't understand any thing of this man, but will explain all to you when you come to see us, and will give you what I have asked for you. Adieu, my dear cousin, you will let us hear from you often, informing us of your health and that of your friends.—Your's affectionately,

"May 30, 1779. H. HUNTER."

N° XX.

"Sir; I received, very exact, the letter that you have sent, which has given me much pleasure. I pray you to observe what I want at present; that you take more care than ever of our affairs; I have reason to desire this of you; the situations of our family are more interesting than ever. I shall not get home till the next month, when you may be sure of what I have promised you. I am your most obedient servant,

A. KERR."

"London, Monday even. Oct. 11, 1778."

N° XXI.

"Dear Friend; I have received, yesterday, in writing, the confirmation of the arrangements concerning Mr. Busby; therefore it is very necessary at present to give me the proof of this friendship in sending me, without loss of time, all that belongs thereto, with respect to the affairs of the family, and enable me to prove to the lawyer that all that has been proposed is truth; therefore send me the soonest possible the papers of your cousin S. H. before his departure, at length, that I can do justice to your manner of thinking and acting. Do not trouble yourself with the other farms at present, only with the one occupied by Mr. Busby. Write to me immediately, to No. 28, Soho, and consider well the importance of your process, for the future well-being of your family. If it is necessary, do not neglect to come yourself to see me. I am yours,

C. MULLER."

"November 13."

Who is Mr. Busby, mentioned there?—That was a fictitious name; that was the person, I told M. De la Motte and the minister of France, who would supply me with all the private signals, as likewise the instructions that governor Johnstone received.

What was meant by 'your family' and 'his family'?—That means the fleet.

Who was your cousin S. H.?—I believe that was sir Samuel Hood, who was then about to sail.

'Prove to the lawyer that all that has been proposed is true,' what is meant by that?—Prove it to the minister of France, Mons. de Sartine. He received another letter from me whilst he was writing this: this is an answer to another letter, dated the 14th of November. [It is read.]

"I opened my letter, having received this moment your's of yesterday, the 13th instant, in which I see with pleasure that you well understand the necessity of actions, and not of mere words.

"I have sent three times to the person for franks, but he can never be found. I wait momentarily for the person that you write should arrive; naturally concluding that you will send me all that is necessary relative to the voyage of my cousin, that one can send him on his journey."

"November 14."

What cousin is that?—Sir Samuel Hood, I presume.

Did you understand it so?—I did.

Anthony Todd, esq. sworn.

Examined by *Mr. Attorney General.*

Did you receive any directions to stop letters under a particular address?—I did.

What was the address?—"Mons. Grolay, merchant, at No. 64, Paris, Richelieu-street." I stopped this letter (producing it) at the post office.

Did you stop any others?—Yes, I did.

What did you do with them?—Sent them to the secretary of state.

Cross-examined by *Mr. Peckham.*

Is that the identical letter?—Yes, and was received upon the day that it is stamped.

Has it been in your possession ever since?—Yes, except a little time at Mr. Chamberlayne's; but I marked it with the initials of my name, so that I know that to be the letter.

Sir Stanyer Porten,

Examined by *Mr. Attorney General.*

Did you receive any letter from the post-office, which had been stopped?—Yes.

What did you do with that?—I put the initials of my name upon it, and Mr. Chamberlayne has it.

There is no address upon it now?—It is lost.

What was the address?—To Mons. Grolay, Richelieu-street, Paris, No. 64.

Is that the identical letter you received?—It is; here is my mark upon it.

(The letters shewn to Lutterloh.)

Whose hand-writing is this?—*Lutterloh.*

They are both M. De la Motte's handwriting.

Cross-examined by Mr. Peckham.

You have delivered a letter without any address to it?—There was a cover to it.

How came that cover to be lost?—I really cannot say.

I suppose this letter was sent to you, and you thought it of some importance, or you would not have kept it?—It was sent to the secretary of state.

You know nothing then of what cover was to it?—Yes, I had the cover in my possession.

How came so careful a man as you to lose the cover?—I did lose it.

What was the direction upon that cover?—

“Monsieur, Monsieur Grolay, Richelieu-street, Paris, No. 64.”

I thought you repeated the direction in English?—Yes; I repeated it in English.

Then you was so obliging as to translate it for the country gentleman?—I translated it.

I understood you to say, upon your oath, the direction was in English: you now, upon your oath, say it was in French?—I did not say it was in English.

How happened it you lost that cover?—I have lost it, I don't know how.

Who gave you the letter?—It was in a packet, directed to the secretary of state, and I opened it.

Who gave you the packet?—I found it at the secretary of state's office.

N° XXIII. [Translation.]

“London, Jan. 11, 1780.

“Sir; since my last, I have nothing whatever, interesting, to inform you of at present, this being only to recall me to your remembrance, and to assure you of the attachment which my wife and children do, and so long as they live will, preserve for you.

“With respect to our political matters, we are in the same position, and wait with great impatience for news from all parts of the world, without exception; not having had any even from Rodney, nor concerning the hostilities committed against the Dutch flag; having confined ourselves to ordering, that no vessels should be released, and treating the principal officers, and even the crews, with much attention and gentleness, until the return of messengers sent on both sides.

“As to our home concerns, we are engaged in rendezvousing at Portsmouth the seven East Indiamen, which are to sail from that port between the 26th and 30th instant; three of which are already gone round from Gravesend to Portsmouth completely laden and equipt, and the remaining four are to sail likewise from Gravesend within six or eight days at farthest. We are also busied in assembling the four regiments, making four battalions, of Tottenham, St. Leger, Ackland, and Chewton, consisting of 2,200 men, which are part of the troops newly raised by the duke of Ancaster

and lord Harrington. These four battalions are destined for the West Indies, and are the last of the troops intended for that country; and when gone, will complete the number of 8,871 men destined to operate in the West Indies, Georgia, and Africa.

“We are preparing for our convoys, which are to sail the beginning of March, for North America and Canada, consisting of 10,000 effective men, whereof a part is to be made up of new levies, recruits, and Germans.

“As our convoy from Cork is to sail between the 15th and 18th instant, under escort of only two 28 gun frigates; there will remain but the two above-mentioned to be sent out at the appointed time.

“We are under some anxiety for the return of the seven East India Company's ships, as well as for those from New York, which we expect for the latest at the end of this month, and which will add greatly to the force in the ports of England, at this moment in comparison of that remaining at Brest. As we have no more than eight ships at this present time fit for sailing, the others being under repair, we have appointed to guard the entrances of the channel (which you term La Manche), viz. eastward, or the German ocean, a 50 gun ship and four frigates;—and westward, or the entrance to the ocean, three ships of the line, whereof one of 98 and two of 74 guns, and five or six frigates, besides several cutters appointed to watch as close as possible the bay of Ushant. Such is our present condition.

“The object of the association now forming becomes more and more important, and the cause of uneasiness to administration, because the heads of the association aim at disposing of the militia and the new levies of volunteers. The counties of York, Cumberland, Hants, Sussex, Surry, and Middlesex, have declared themselves, and the leaders multiply daily. Wilkes is the firebrand, and points out the means. I shall acquaint you with the sequel of this affair, which we apprehend may become of consequence.

“The association of the Protestants against the Catholics is not so dangerous; but they are a burthen upon our minds, and shackles to our operations.”

N° XXIV. [Translation.]

“To M. Grolay, merchant, Richelieu-street, No. 64, Paris.

“London, 1st Dec. 1780.

“We have taken the opportunity of an insurance to send you last Thursday a bale of goods which you desired of us, and which we hope will arrive safe. We shall send off for Ostend, next Sunday morning, a small box, directed to Mr. Bouwens, containing the prints, which we believe we have chosen well. We do not expect to send any thing more for some days, as there are no other goods ready for packing. We desire you to

rely on our punctuality in fulfilling carefully your orders.
J. WANDERMEER.

"P. S. Sir Samuel Hood sailed Thursday the 29th with eight ships of the line, ten frigates, and three cutters, and every thing wanting for our West India islands. We have insured, at 50 per cent. the seventeen vessels sent on private account to Gibraltar: as they sail with admiral Hood unto a certain latitude, we only fear their entrance into the straits;—but this insurance does not concern you.

"With regard to remitting the remnant of our old account, I desire you to discharge the two payments of it, viz. 6,000 livres, place Dauphine, and the rest to the house of Mr. Simper, whereof a discharge will be given by us upon the receipts."

"From Mr. Soyez."

Francis Bauer sworn.

[This witness not understanding English, an interpreter was sworn.]

Examined by Mr. Solicitor General.

Do you know M. De la Motte?—Yes.

How long have you known him?—Since the month of December last year.

Have you ever seen M. De la Motte write?—Yes.

Look at these papers, and tell the court and jury whether you believe these to be the hand writing of M. De la Motte?—No. 7, 8, 9, 10, 11, 12, 13, 14, 16, are all the prisoner's hand writing. I can't say that No. 18 is his hand-writing. No. 19, I do not know that it is his hand-writing; I do not know whether No. 20 is his hand-writing or not. No. 21 and 22 are his hand-writing; and this note (No. 17) for the payment of 121*l.* is his writing. No. 23 and 24 are his hand-writing.

Cross-examined by Mr. Peckham.

Who are you?—A merchant.

Where do you live?—In Queen-street, Golden-square.

How long have you lived there?—Six months.

Is the house your own?—No; I am a lodger.

What is the person's name with whom you lodge?—Robinson.

Is he the master of the house?—Yes.

What apartments have you?—The first floor.

What merchandize do you deal in?—I do not trade here, but traded from my own country; I am just come over.

Then you are a merchant that does not trade?—I traded in my own country, and came over here to trade.

Have you traded since you have been here?—I have been in a merchant's house here three years ago.

Whose house?—The merchant's name is

Benthousen; I lived with him as a clerk in the counting-house.

How came you to leave him?—Because I would go home again to my own country.

Then, having gone home to your own country, why did you come back?—Because I had a suit at law in my own country.

Where did you last come to in England?—I was always in the same house.

Were you never down at the house of Mr. Lutterloh, in Hampshire?—Yes.

How came you acquainted with Mr. Lutterloh?—I was acquainted with Mr. Lutterloh three years ago, and likewise when he was in Germany.

Were not you a servant to Lutterloh?—No.

How long were you down with Lutterloh, and when?—I was down six weeks.

At what time was that?—The beginning of November.

You said just now, that you had lodged at Mr. Robinson's ever since you have been in England: how came it to happen that you had been at Lutterloh's six weeks of the time? Explain that, if you can.—When I first came to England, I lodged in Little Charles-street.

When did you lodge there?—From August to September.

Where did you lodge before the month of August?—I did not lodge any where else; Charles-street was the first place.

You told me, within these five minutes, that you came to England six months ago: now you say you were there a twelvemonth ago.—I came to London first in the month of August in last year.

When did you first see M. De la Motte?—I was acquainted with M. De la Motte through Mr. Lutterloh.

On what day did you first see him?—I cannot tell the day.

Where did you see him?—In his own house in Bond-street.

That was the first time you saw him?—Yes.

What did you go there for?—Because I had a letter from Mr. Lutterloh.

How long did you stay with M. De la Motte at that time?—I staid but a little time the first time when I saw him; but he desired me to go again the next day.

Did you go again the next day?—Yes.

How long did you stay then?—I staid but a little while the next time.

Where was Mr. Lutterloh then?—Mr. Lutterloh was at Wickham at that time.

When did you see M. De la Motte again after those two times?—He desired me to take a lodging, and come again in a couple of days time.

Did you come again in two days time?—Yes.

To take a lodging! Why, you had a lodging?—I had not a lodging at that time.

From whence did you come when you first came to De la Motte's house?—I came from Wickham.

Was that the lodging you took in Queen-street, Golden-square?—Yes.

When did you see M. De la Motte again, after the two days?—I saw him two days afterwards again.

What day was this of December?—I can't tell the day.

Do not you know when you first went into your lodgings in Golden-square?—I have forgot that.

When did you see him again?—In two days again.

Did you always use to go every other two days?—No, not always, only when I was ordered.

What did you go for?—By his orders.

For what?—If you will give me leave, I will tell the whole story. When I had been about six weeks with Mr. Lutterloh at Wickham, Mr. Lutterloh asked me if I would not accept of a place to have ten guineas a month.

Do not you talk English?—I can't speak it, not to explain myself.

You don't converse in English in London?—No; I do not.

Had you any employment under M. De la Motte?—No; I did not know any thing of Lutterloh nor M. De la Motte at that time.

Were you ever in any employment, or did any business, for M. De la Motte?—Yes.

What was it that you did for M. De la Motte?—I had not done any thing for M. De la Motte; but one letter was carried from him to Wickham.

To whom did you carry that letter, at Wickham?—To Mr. Lutterloh.

Did you often see M. De la Motte after you became acquainted with him; and when you carried the letter?—Yes, only a few times or so, not often.

What did M. De la Motte talk to you about, when you did see him?—M. De la Motte offered to pay me, on the 15th of January, ten guineas a month if I would be in his service.

Did you agree to that offer of M. De la Motte's?—Yes.

Did you after that time, when you had so agreed, continue in the service of M. De la Motte?—Yes.

How long did you continue in the service of M. De la Motte, so paid at ten guineas per month?—I have never been paid any thing at all from him (for M. De la Motte was arrested before the time came) excepting a bank-note for 10*l.* and three guineas which I received before of him; but the 10*l.* was for travelling charges.

When you first came to London in December, Lutterloh was at Wickham?—Yes.

Did you see Lutterloh in London after that?—Mr. Lutterloh and I returned together from Wickham to London.

Where was Lutterloh in London when you went to De la Motte?—I do not know where he lodged in London then; I cannot recollect where it was.

How came you to carry a letter from Mr. Lutterloh to M. De la Motte, if Lutterloh himself came to town with you?—That happened before we came together.

You said just now, you and Mr. Lutterloh came to London together. When was it you came to London with Lutterloh?—In the beginning of December.

Did Lutterloh come with you then, or did he not?—Yes.

Was that the time that you carried the letter?—At that time I was not in M. De la Motte's service.

And you came up to town then with Lutterloh?—Yes.

Do you know where Lutterloh lodged in London?—I have been in his lodgings; but I cannot recollect.

Was it the first time you came up to London with Lutterloh that you brought the letter to M. De la Motte?—I was not in M. De la Motte's service when I came with Lutterloh.

I know that; but I want to know, when you first came to London with Lutterloh, whether that was the time you first went to De la Motte with a letter from Lutterloh?—No; I did not know M. De la Motte at that time, nor did not carry any letter.

When was it that you did carry a letter?—I brought the letter to M. De la Motte on the 24th or 25th of December.

That was the first time you ever was with M. De la Motte?—Yes; the very first time.

At that time Mr. Lutterloh was in the country?—Yes.

How long after that letter was it that you saw Lutterloh again?—A very short time afterwards; for I came back again with a letter, and delivered it to Mr. Lutterloh.

When did you first see M. De la Motte write?—The third time that I was with him, in the morning.

What was it he wrote?—M. De la Motte asked me what I had seen at Mr. Lutterloh's, and if I had not made a journey to Portsmouth, and if I had not made a journey with him to Plymouth.

I asked you what it was you saw De la Motte write?—What I have said now, about whether I had been at Plymouth and Portsmouth.

When he had wrote it, what did he do with it?—He kept it as a notice or memorandum to himself.

When did you see him write the second time?—The second time I saw him write, was, when M. De la Motte sent me to Lutterloh.

What did M. De la Motte say in that letter?—I did not see the inside of the letter.

When did you again see him write?—I never saw him write but those two times.

Some of these papers you said are not his hand-writing, the others are?

Mr. Solicitor General. He said two of them he does not know.

Mr. *Peckham*. Do you know your own hand-writing?—A. Yes.

Is that your hand-writing? (giving the witness a paper.)—Yes.

Mr. *Solicitor General*. The gentleman asked you just now, whether a paper he produced to you was your hand-writing?—A. Yes, it is.

How came you to write it?—I do not know what it is.

Mr. *Le Cointe* sworn.

Examined by Mr. *Howorth*.

Do you know M. De la Motte, the prisoner?—I do.

Have you ever seen him write?—I have.

What business are you?—A merchant.

Do you carry on any business?—We are in the exchange line, and a merchant for goods likewise.

Did De la Motte keep cash with you occasionally?—We received remittances from Paris for him.

To what amount?—To about 3,000*l*. I believe, from the month of June, 1778, when we were first acquainted with M. De la Motte.

To what time?—Till the end of last year.

Look at No. 7, and see whether you can form any judgment whose hand-writing it is?—Before I do that, I think it is necessary for me to mention that I have seen M. De la Motte write, but it is but very seldom: I have received notes and papers from him, but they are very few; and therefore I am not acquainted sufficiently with his writing to have a thorough knowledge of his hand-writing.

I ask you whether you believe it to be his hand-writing, or not?—I should think this to be his hand-writing. I believe No. 7, 8, 9, 10, are all De la Motte's hand-writing. No. 11 I don't believe to be his hand-writing.

Look at the seal. Have you seen that before?—I cannot say that I have; I do not recollect it. No. 12 I believe to be M. De la Motte's, and No. 13, and 14, likewise. No. 15 I have great doubts about. No. 16 I believe to be his hand-writing, and No. 17, 18, 19: there is a signature at the bottom of 19, which I do not know. I have doubts about No. 20. I believe No. 21 to be his hand-writing. I do not think there is any of M. De la Motte's hand writing in No. 22, save the words "ready money" at the top. No. 23, and 24, I believe to be his writing.

Have you ever received letters from M. De la Motte?—I have.

Whether the seal upon that letter is the same as the seals to letters you have received from M. De la Motte?—I believe it is.

Have you the letters with you?—I have (the witness produced a letter, and compared it); they are the same seal as there is to No. 9, 10: the other seals I am not acquainted with.

Cross-examined by Mr. *Peckham*.

You say you have very seldom seen M. De la Motte write?—Yes, very seldom.

What have you seen him write?—I have seen him sign his name very frequently; D'Akerman at first, and afterwards De la Motte.

Have you seen him write any thing else but his name?—Yes, I have seen him write a note or two at our compting-house.

That is, you were in the compting-house when he wrote the note; but I take for granted, you was too much of a gentleman to look over him?—It was not a note to send out of the compting-house, but a note of some little transaction that happened in the compting-house, or rather a direction.

What was the note?—I can't recollect.

Can you take upon you to recollect the hand-writing of a note, when you can't recollect the purport of the note?—Yes, really I can.

Then it is not from having seen it at that time, but your recollection arises from having seen his writing at other times?—And that time likewise.

You saw him write a note, the contents of which you do not recollect; and it is from thence you recollect his hand-writing?—Yes, as also from these notes which I have got here, and from one or two more that I have received from him.

Did you see him write these notes you have here?—No, I did not.

Then your idea of his hand-writing arises from your recollection of it from these notes, and not from the times when you have actually seen him write?—From one and from the other; from the note I saw him write in the compting-house; it was from thence that I ground the opinion I have of his hand-writing.

If you had never received these notes, which you did not see him write, and recollected his hand-writing only from those things which you actually saw him write, would you then swear, you believe these to be his writing?—From those papers I have made oath to I could.

And you have seen him write his name once, and once write a note in your shop, of which you do not recollect the contents?—I have here six receipts I put in my pocket; there are many others I left at home.

These are merely the signature of the name that was written by him?—The signature, the name only.

Therefore, if he had written it a thousand times, it would have been the same number of letters?—I think he one time, though I am not very certain, gave me his direction at Hampstead, when he lived there.

Mr. *Samuel Atkins* sworn.

Examined by the *Solicitor General*.

Do you know M. De la Motte, the prisoner?—I have seen him.

Where?—At his lodgings at New Bond-street, and at Mr. Lutterloh's house at Wickham.

When you saw him at New Bond-street, was Mr. Lutterloh with him?—Yes, he introduced me.

You live upon your fortune, in Hampshire?—Yes.

Where did your acquaintance with Lutterloh commence?—From his situation at Wickham. I live at Wickham: I dined with Mr. Lutterloh at M. De la Motte's: I afterwards saw M. De la Motte at Lutterloh's house at Wickham.

When was that?—After Christmas, some time the beginning of this year; it was a day or two before I heard of M. De la Motte's being taken up.

At the time when you saw M. De la Motte at Lutterloh's, was he upon a visit to him?—I understood so.

Mrs. Hannet sworn.

Examined by Mr. Solicitor General.

Where do you live?—I live at No. 18, Porter-street.

Have you seen M. De la Motte come to your house?—I can tell if I see him.

Look about the court.—I don't see the gentleman.

(The witness went round the court, but did not fix upon any person.)

End of the Evidence for the Crown.

Mr. Peckham. I find myself unexpectedly called upon to enter on a defence, which, from the nature of the charge, and the length of the evidence, requires, and would have received, the assistance of Mr. Dunning; but unhappily for me, and still more unhappily for my client, illness disables him from performing that duty which I feel myself by no means qualified to discharge. Were my learned friend to make the defence which now devolves upon me, he would easily convince you of the innocence of M. De la Motte, and repel the accusation with infamy on his accusers.

But it is not M. De la Motte alone who has reason to deplore the absence of Mr. Dunning; I feel most sensibly the weight of the misfortune, and have no consolation but this, that your recollection will assist my memory, and your judgment correct my errors. Permit me therefore to solicit your grave and serious attention in behalf of the unfortunate gentleman at the bar, who is called upon to answer with his life a charge of constructive treason, founded on an English act of parliament. He stands before you, a stranger to your language, your customs, and your laws; yet he relies with confidence on his innocence, on your justice, and on that humanity which is the genuine characteristic of an Englishman.

Of his innocence, I trust, you, gentlemen, entertain as little doubt, as I do of your humanity; because I flatter myself that you possess that liberality of sentiment, which, superior to narrow prejudice, disdains all national distinctions. I speak not from an idle

hope, but from observations founded on experience.

I have remarked, in all causes at Guildhall, even between alien enemies and English underwriters, that the juries of the city of London, whether composed of the most opulent merchants or the meanest mechanics, have all been actuated by the same nobleness of soul, and lean most partially, and I will add most honourably, in favour of the foreigner against the native. When I say most partially and most honourably, it may strike you perhaps as a solecism in terms; but it is a conduct that has been stamp'd with the approbation of lord Mansfield, who publicly declared in the Court of King's-bench, within these few weeks, that it was much to the honour of the London juries, that such a partiality universally prevailed in favour of the foreigners who appealed to them for justice.

As the juries of the city of London are so laudably attentive to the property of an alien enemy, have I not a right to expect that a jury of the county of Middlesex will at least be as attentive to the life of an unhappy fellow-creature; and that this gentleman will experience from you the same measure of justice as your countryman, your neighbour, or your friend?

It is not from affectation that I call him 'the gentleman at the bar;' but I cannot bring myself to wound his feelings by the humiliating sound of 'prisoner,' when I know that he is by birth, education and profession, a gentleman. You will naturally enquire his history, which his ignorance of our language will prevent him from stating. Permit me therefore to give you the outline, and the reasons which induced him to settle in this country.

In the course of the last war he served his country with honour, and became colonel of the regiment of Soubise. When the war ended, his regiment was broke, and of course some part of his emoluments diminished: he had then to retire to his own estate, which was situated in Alsace, and which communicated to him the barony of D'Akerman. Here let me observe, that Mr. Le Cointe informed you, that he sometimes wrote D'Akerman, and at other times De la Motte. These different signatures might induce you to believe, that he had passed under fictitious names: but that I can easily reconcile; for titles of honour in France differ in many instances from titles in England: here they descend from father to son, and a man enjoys the title from his blood; but there it belongs to the particular estate, and he who is the possessor of the land often possesses the title. When I say this, I do not mean that every estate in France communicates a title to its possessor; but I wish to be understood, that an estate in France which is called a seignior, and answers to a manor in England, communicates a title to its owner, of baron, count, or marquis, as it may happen; which titles

are attached to the estate, and not to the person. By virtue therefore of an estate in the province of Alsace, the gentleman at the bar became baron D'Akerman. His regiment being broke, he, like many of our men of fashion, lived at an expence beyond his income: the natural consequence was, that he became so involved in debt, that, though not ruined, he found it expedient to retire into this country, as our nobility and gentry retire to France, for the purpose of arranging his affairs.

He appeared here in his real name of baron D'Akerman, and continued in that character about twelve months, when his estate was sold for the benefit of his creditors, his debts were paid, and the wreck of his fortune was destined for his subsistence: the residue was sufficiently ample for him to live here in comfort, and in a degree of affluence; but was very insufficient for him to return to his own country, in that splendor and state he had been in the habit of living.

As soon as he sold his estate, he dropt the title, which no longer was his, and took his family name of De la Motte, and lived in this country, as quiet, and as free from vice or guilt, as any man to whom I have now the honour of addressing myself. But, unfortunately for him, he became acquainted with Lutterloh, who introduced him to Mr. Waltrond. I need not observe to you, that Lutterloh is a man of intrigue, a great schemer, in short, an adventurer. Waltrond and Lutterloh advised M. De la Motte, as he had great knowledge of prints, and understood drawings and pictures, to deal in those articles, as it was not at all beneath the dignity of an English gentleman, though in France it might be thought disgraceful; by which means the fortune that remained to him might be amply increased. In consequence of this advice, and feeling a desire to enlarge his income, he commenced a dealer, and carried on trade. I do not mean, by trade, to say that contraband trade which is forbidden in this country; but, if he had, as it would only have been a breach of a law of policy and regulation, I think you would not say M. De la Motte was a very great offender: but, as I am taught to understand, the articles in which he dealt were articles not prohibited to be exported; but were valuable in France, and for which he had his remittances in money. When I say in France, I mean upon the Continent; for many of these things were carried to Ostend; some, indeed, to Dunkirk and Boulogne: but they were chiefly sent to the emperor of Germany's dominions. Those articles were prints, drawings, the different kinds of jewellery that are in estimation there, and the hard-wares of Birmingham and Sheffield.

This account does not rest only on my assertion; it has been proved to you by the witnesses called for the prosecution: and in consequence of that trade it is that these re-

mittances were made to him in England, as mentioned by Le Cointe; which might possibly have made an improper impression on you, on the idea of their amounting to 3,000*l.* in the space of two years: but, when you consider great part of these remittances were for goods sent abroad, you will no more call that receiving 1,500*l.* a year, than you will say a tradesman gains 1,500*l.* a year because in the course of the year he appears to have received that sum, when probably the balance is trifling, and he only lives upon the residue.

After he had carried on this traffic for some time with perfect innocence on his part, and without the least suspicion of crime, Lutterloh, who had upon various occasions started different schemes by which he might amass an ample fortune, at length proposed that which I was astonished to hear him allude to; for I thought he had been too artful and too cunning a man to mention any thing of the sort: but however he has inadvertently interwoven some truth in his narrative; for he had applied to M. de la Motte, and told him that his commerce might be made much more valuable, if he would carry it on upon a more extensive plan, and send it directly to France.

M. De la Motte said that was impossible, as there was a war with France; he therefore could only send his goods to Ostend, unless by chance he might be able to get one of those men that had been employed to send his goods to Dunkirk or Boulogne; that the scheme did not seem feasible; and that he should only lose his property, instead of extending his trade.

Lutterloh insisted, that the scheme was plausible. "I am, for instance," says he, "a very good friend of sir Hugh Palliser" (whether sir Hugh feels it as a compliment, is not for me to determine): "I can, through his means, get a passport of lord Sandwich; and, under the ostensible idea of conveying false intelligence to France, we shall then get a passport; our vessels will go in safety; and we will tell the French ministry that we will give them true intelligence, but, in fact, will give them false."

M. De la Motte, much to his honour, said, that, though he lived in this country, he had not forgot that he was a native of France; and that he would neither betray the country in which he lived, nor be base enough to deceive that country in which he was born. The shameful offer was rejected with scorn; and M. De la Motte pursued the plan in which he set out.

It is worthy observation, that Lutterloh should be so exceeding solicitous for M. De la Motte to come down and pay him a visit at Christmas: it is something extraordinary that he should have given to M. De la Motte, papers, the contents of which could have been so easily carried in his head: it is very odd (if there were these smuggling vessels that

Lutterloh could have daily sent from Portsmouth, or that neighbourhood) that these papers should be carried to London, instead of being sent by them. Strange as it may appear, yet it is Lutterloh's story.

I have not yet been told by any witness, how it happened that M. De la Motte was seized at this particular period, with those very particular papers in his pocket, all of them in the hand-writing of Lutterloh: but I can easily understand, that Lutterloh, to add another scheme to the many he had perpetrated, thought he could engage government powerfully in his favour, and that he could fix and fasten to himself the honourable friendship of the honourable sir Hugh Palliser; and that he could not employ better means than by holding up M. De la Motte as a traitor, who ought to be brought to punishment for the intelligence he was about to give. If Lutterloh had not conveyed that intelligence into his pocket, it is inconceivable to me that M. De la Motte should be seized the moment he got to town, and that these papers should be found in his pocket when he came from Wickham, which ought to have been sent from the coast to France, not to have been brought to London.

I flatter myself, that every man belonging to government would be above bringing an innocent man's life in jeopardy, unless convinced of his guilt: notwithstanding which, I can clearly conceive that Mr. Lutterloh, whose character you can be no stranger to, if you will pay credit to himself, might think he could get a fortune by his treachery, foolishly imagining that he should do most acceptable service to his friend's friend at the head of the Admiralty, if he could fix on M. De la Motte a criminal correspondence with the enemy; which would be an apology for those manifold misfortunes, and repeated miscarriages, that have brought this devoted country to ruin, and which we have been weak enough to attribute to the inability, negligence, and incapacity, of those who have presided over the naval department. He might possibly conceive that any apology for those ill successes would not only merit, but command a reward.

Having said thus much of the history of M. De la Motte, permit me now to state to you for what he is indicted. He is indicted for high treason, under an act passed in the reign of Edward the 3d; by which, to compass or imagine the death of the king, or to give aid, or adhere to his enemies, upon sufficient proof of open deed, subjects the offender to be attainted. "To compass," signifies the intention of the mind; but, as that intention can be judged of only by the Almighty, it does not fall within the limits of human jurisdiction; and therefore the intention of the mind is not within the act of parliament, unless accompanied by some open or overt deed. From the evidence that has been already given, it would be abundantly too much

for you to put so forced a construction upon this act, as to say that sending a copy of a newspaper, or a printed list of the sick and convalescents at Haslar hospital, is to compass and imagine the death of the king: therefore the first count, I trust, will not be supported by your verdict. But I am ready to allow, that there is another count in the indictment, which will do equally as well for the purpose of justice; which is, 'adhering to the king's enemies,' &c. I am free to confess, that giving intelligence to the king's enemies does amount to an overt act; and I should not do myself nor you justice, if I did not admit it: but when I make the admission, I beg you will attend to the proof of that charge.

The first charge in the indictment is, that he composed and wrote a certain letter, giving an account of the number of the ships at Spithead, and of the fleet under commodore Johnston, with many other particulars that I need not repeat, to be sent 'to certain subjects of the French king.' That is the first charge in the indictment: therefore you will please to recollect, that if he has sent ten thousand letters to persons who are not subjects of the French king, they cannot criminate M. De la Motte, because the indictment is not proved, which charges him with sending letters to the subjects of the French king. Here let me ask, what was sent? Not letters, but prints; and even these were sent to Ostend. Therefore, when I asked, not foolishly, though it provoked a smile from the counsel for the crown, whether Ostend was within the dominions of the emperor of Germany? I asked it, not meaning to throw any imputation upon your knowledge, but because it was necessary to appear in evidence, that Ostend was under the dominion of the emperor. The moment that fact was proved, every thing that Roger carried from England, even if he had carried it from M. De la Motte himself to Ostend, was totally irrelative to this indictment. But, say they, there was a person at Ostend connected with a Mr. Dessein of Calais. Be it so! But Le Fevre did not receive any goods of Roger as a servant or a messenger of Dessein's; but he attended daily at the market, if I may be allowed the expression; had a lodging in the town, and resided there, to buy carriages and other articles at Ostend, for the use of Mr. Dessein. He therefore did that which every other person might do, purchase, at a fair price, those commodities that were sent over from England to Ostend; whether by M. De la Motte, Waltrond, or by any other person, is totally immaterial; and of course you will lay it out of the case.

The next charge in the indictment is, that on the 30th of June M. De la Motte hired Stephen Ratcliffe to carry, in his vessel, certain letters and instructions to inform the French king and his subjects of the stations of our naval and military force. Now, gen-

lemen, is that proved? Is it proved that M. De la Motte hired Ratcliffe to carry any thing? If it is, is it proved that M. De la Motte hired Ratcliffe to carry letters and instructions? But if it is proved that he was hired by M. De la Motte to carry letters and instructions, is it proved that those letters and instructions went to the subjects of the French king? No! Ratcliffe carried these things to Ostend: and he does not even now pretend to say, that the things that were carried to Boulogne were given him by M. De la Motte, or his order.

One of the Jury. I beg your pardon; a letter dated June 30th was directed to Mons. Sartine.

Mr. Peckham. I thank you for your attention; but I do not make myself understood. The charge is, that Stephen Ratcliffe was hired, by M. De la Motte, to carry letters and instructions to the subjects of the French king. If you please, I am ready to allow that Ratcliffe did carry a letter directed to Mons. Sartine; but I call upon the minutes of the court, and I am confident from thence you will hear, that the letter addressed to M. Sartine was not proved to be in the hands of M. De la Motte, was not proved to be written by M. De la Motte, and was not proved to be sent by his order.

Gentlemen, before I proceed, perhaps it will be necessary for me to recall to your recollection what evidence has been given with respect to these letters that are supposed to have been sent by Ratcliffe. We had some argument upon this subject before; therefore it may be necessary now for me to say the less upon it, because there is not one letter before you in evidence, no, not a single letter, that was ever carried by Roger or Ratcliffe; nor is there the copy of any one letter, that was carried either by Roger or Ratcliffe, in evidence. I mention this with some emphasis, because I have no doubt it must have made a certain impression upon your minds; I mention it, that you may do justice to the prisoner, and to yourselves, by erasing that impression from your minds, which the counsel for the crown ought not to have made. None of the original letters have been produced: if they had, they could not have been traced to M. De la Motte. Copies of those letters only have been produced, which the Court would not suffer to be given in evidence. You are therefore relieved from that part of the indictment.

I think the next charge in the indictment is, "that on the 5th of January, 1781, M. De la Motte did obtain, and get into his hands, accounts of the numbers and the names of the ships at Portsmouth, and of the squadron to sail under commodore Johnstone." Now you will please to observe, that he did it "in order, and with intent, to send the same to certain subjects of the French king; and for that purpose he conveyed them to the house of Richard Otley." Upon this charge of the

indictment you can receive nothing in evidence, but those papers that were actually conveyed to the house of Mr. Otley; and even then they will not affect M. De la Motte, unless you think yourselves bound by your oath to say that they were brought to London in order, and with the intent, to send them to the subjects of the French king.

Let me ask you, gentlemen, how does that intention appear? For the charge, you observe, is, that he obtained accounts, and got them into his hands, with the intent of sending them to the subjects of the French king; and for that purpose he conveyed them to London. Does his conveying them to London, into the interior part of the kingdom, from the sea-coast, shew that intention? Is there any evidence of the intention of M. De la Motte to send those papers abroad, that were found upon his person in London, when it appears that he had brought them from the sea-coast, where, if what Lutterloh has said is true, there were vessels ready at every hour to go to France? Notwithstanding which, he takes them from the sea-coast, where they might be sent, and brings them up to London, as it seems to me, for no other purpose than to send them back again. As no proof of this intention has been given, you will not presume it; for, in a case of life and death, I am sure you will presume nothing against the accused. Your humanity, your justice, will not suffer you to draw any metaphysical conclusions of the intention of a man, unless it is fully proved to you by action. But, permit me to ask, what are these papers that were thus found upon him? Jellous has told you, that he found in all seven papers: some of them he took from his pocket; others he took from the floor. You will please to recollect, that these men had been waiting for him upwards of 24 hours. Whether, therefore, they brought any papers into the house; whether there was any thing upon the stairs that did not belong to him; whether they, or any body else, had dropped any thing, is more than you can tell: for the fact is, that some of the papers only were taken from his person; others were taken up, that lay upon the floor. I suppose it was intended to convey some insinuation of the guilt of M. De la Motte, that when his servant spoke to him, he turned upon his heel, as if he wished to go out. I could have wished an Englishman had not given such an evidence: "he turned upon his heel, as if he wished to go out." It might have been as well, if he had only stated the fact, without drawing his conclusion. He adds, that these papers were thrown from his pocket; I take it for granted, with a view to make you believe that M. De la Motte thought there was something so criminal in those papers, that he, for his own security, attempted to get rid of them. Yet one of the papers thrown from his pocket was a 10*l.* bank note. Can you not conceive, that a foreigner,

finding himself attacked, if you please by the officers of justice, and knowing them to be so—cannot you conceive, that he thought it full as well for him to take care of his own property, or even to throw it upon the floor, or give it to his servant, as to give it to the officers of justice? of whom he probably might have heard, that they are in stronger habits of seizing property, than of returning it, and that from their office property does not always find its way back so readily to the persons from whom it was taken. I think he was not much to be blamed for this: and it will be at least as fair, and as honourable, for you to suppose that he threw these papers away with a view of preserving his bank-note, as to suppose that he threw these papers away for fear they should criminate himself. Gentlemen, the papers that were thus taken up were, a printed bill of Haslar hospital, an account of commodore Johnstone's squadron, and likewise an imperfect account of the ships that were at Spithead. These are the papers, and these are the only papers, that were seized upon his person.

Gentlemen, you will be so obliging as to pay some little attention to the observation I am about to make: not from the quarter from whence it comes, but as it may deserve some attention in the determination that you soon must make. Those papers that were taken in M. De la Motte's custody and possession, were not one of them in his own hand-writing. The papers thus seized were written by Lutterloh, the gentleman at whose house he had been on a visit; and for what purpose could these papers have been brought to London, unless it was for the insidious purpose that Lutterloh had planned, of having these things found in his possession, to make good the charge in this indictment?

This brings me to the next charge in the indictment, which is, "That he, De la Motte, retained Lutterloh to obtain information of the sailing of commodore Johnstone's squadron, and to send such information to certain subjects of the French king." Now, you will please to remember, that this is proved likewise by Lutterloh only; and you will please to remember, that employing a man to send instructions, or advice, if that intelligence is never sent, though it may be in itself criminal, though it may be unjustifiable, is not an offence for which a man's life is to be forfeited. I may employ another, if I have a heart like Lutterloh, to take away the life of a fellow-creature; but, God forbid that I should be hanged for murder, though the fact of employment is proved upon me, if the man lives, upon whom the murder was to have been committed! Try the present charge by the same rule: I do not ask too much of you; for, as high treason is a greater crime, you will put as favourable a construction upon it. Suppose every thing that Lutterloh has said is true, that he was actually employed to send certain instructions and advice to subjects of

the French king; yet that advice, and those instructions, were never sent: therefore M. De la Motte may have done a thing that is criminal, but has not done that act which ought to convict him of high treason.

Having said thus much upon the different charges of the indictment, permit me now to remind you of what the law has said, upon which this indictment is founded. The legislature has declared, "That a man must be, on sufficient proof, attainted of some open deed." Sufficient proof is not the oath of one witness, as in the case of a felony; for the crime of high treason is in itself so horrible, the punishment is so tremendous, and the idea of oath against oath (as every man is supposed to have sworn allegiance to his sovereign, therefore, if he is only accused by one witness, the oath of the accused ought to be put against the oath of the accuser) occasioned a very humane law, made in very good times, that declared sufficient proof of high treason to be upon the oath of two witnesses. Such was the regard for life in the reign of king William, when that life was to be taken away on a charge of so terrible a nature. The legislature therefore interfered, and said, that in future no man should be convicted of high treason without sufficient proof, which sufficient proof shall be on the oath of two witnesses. Gentlemen, are there two witnesses to any one overt act, that is, to any open act?

As to the last charge in the indictment, respecting the instructions that are supposed to have been given by M. De la Motte to Lutterloh, that depends solely upon the testimony of Lutterloh himself. If, therefore, there was no other witness upon this indictment but Lutterloh only, the Court would say you must acquit the prisoner, though his credit was unexceptionable, and his character above reproach; because there would be wanting that second witness, which the law has thought necessary to conviction. But suppose, for a moment, that one witness alone was sufficient to convict a person of high treason, and that this Act of king William had never passed; even then, if conviction had depended solely upon the testimony of Lutterloh, the Court would tell you, that you must acquit M. De la Motte; for, upon the testimony of an accomplice, the law will not call upon the accused to make a defence: their lordships would tell you, that if the accomplice's testimony is the only evidence against him, though he may be as guilty as the most hardened villain that ever stood in this court, yet you must acquit him; because to the unsupported testimony of an accomplice no man will or can give credit.

But who is Lutterloh? If you credit the picture of his own drawing, he is a monster, not a man; and his whole life has been a satire on the vices of human nature. The unblushing miscreant on his oath confesses, that he has been guilty of treason to France,

who employed him, and to England, who protected him: he has been guilty of treachery to sir Hugh Palliser, (who honoured him with his friendship) and now thirsts for the blood of his benefactor, whose unbounded liberality has raised him from beggary to affluence. What a tale has he told. He was a foreign officer: he came here to see his uncle, who was an ambassador that never existed, from a country as yet unknown. This ambassador uncle puts his hopeful nephew to school at Winchester, to learn the language of Mr. Taylor, a clergyman: that in the acquiring the language, he likewise obtained the daughter of his preceptor in marriage: that this uncle ambassador was so exasperated at his nephew for contaminating the purity of his blood, and for degrading himself by marrying the innocent daughter of a respectable English clergyman, that he turned him out of doors, dismissed him from his presence; and all streams of liberality were at once shut from this worthy nephew, who before had been the favourite object of his tenderness and care. For this first, this only honourable act of his life, he was discarded, thrown upon the world, an object of detestation; and, because he married a young lady of family and character, he is reduced to the humiliating necessity of offering himself, though the nephew of an ambassador, to miserable servitude. He becomes the servant of a captain Somebody, whom nobody knows, who dismissed him, and gave him the best of characters: yet this character does not appear, though foreign servants always have their character, or certificate as they call it, in writing. He next lives with Mr. Wildman, who parted with him, not from disgust at his conduct, or suspicion of his honesty; for he lived with him more as a companion and friend than as a servant: his master was so extremely attentive to him, even to the nicety and delicacy of his feelings, that he would not suffer him to put on a livery, but dismissed him from his service, rather than insult so great a gentleman as the nephew of an ambassador, by asking him to wear his livery. Nay, Mr. Wildman was so fond of him and his service, that he lent him 15*l.* to set up a chandler's shop, in which he continued till he cheated his creditors, and bid them defiance by an act of insolvency. If I am not extremely mistaken, Mr. Wildman will tell you a very different story. Perhaps it will not be permitted to him to tell you upon what account Lutterloh was dismissed from his service; but, if he dares face the accusation, Mr. Wildman will tell him; and he will tell you, that, so far from giving him a good character, so far from lending him 15*l.* when the wretch dared afterwards, by an unparalleled effrontery, to come to him for a character, his answer was, "Get out of my sight! How dare you approach me! Ask me not for a character, but thank me for my lenity." This is the story Mr. Wildman will

tell you; and if it is, shall the life of a gentleman, and that which is dearer to him, his honour, and the honour of his family, depend on such a witness? I will likewise prove to you by another witness, a stranger to M. De la Motte, who came here a volunteer in the cause of innocence, that he knew Lutterloh a common servant; that he has known him many years as an adventurer, though it was some time before he found out the reality of his character; that he always looked upon him as a projector, but lately as a villain; for he proposed to him a scheme, by which a large fortune was to be amassed, by going over to the prince of Anspach to buy 25,000 stand of arms, which were to be conveyed to Congress, and to be paid for by Dr. Franklin; and that he had desired him to go over to France, to settle the contract. Lappel will likewise tell you, that Lutterloh is a man that he would not trust, that he could not believe, and that he dares not credit.—Is Roger in court? He must withdraw.*

[Roger goes out of court.]

Mr. Peckham. Gentlemen, the measure of Lutterloh's iniquity is not yet complete. God forbid that I should say a word that any witness might lay hold of in a cause of this kind; but Roger is now gone out of court, and I am instructed to say he will tell you, that Lutterloh, before the bill was found by the grand jury, told him, that M. De la Motte was a very rich man; that he believed there would be difficulty to find the bill: perhaps I may not be accurate in the words; but the idea that he meant to convey to Roger was, that it was through him, and through him only, that the bill could be found; that he looked upon M. De la Motte to be a rich man; that, if the bill was found, he should make an advantage of it, and that it would be a fine thing for him.—Now, if he said any thing that did convey that idea to Roger, what conclusion can you possibly draw from the testimony of Lutterloh? What interest could Lutterloh have, if he was an honest man, in the conviction of M. De la Motte? But, if he thought that by the bill being found he might work upon the hopes or fears of M. De la Motte, that he might hold himself up to him as the arbiter of his life or death; then I can put a meaning upon the words he used to Roger, when he said "that he was a rich man, that he should make an advantage of it, and that it would be a fine thing for him." But I trust you will disappoint him, if he expects any reward from the conviction of that poor gentleman at the bar, at least, if that conviction is to arise from his evidence.

As this charge of hiring and employing Lutterloh to send intelligence to the court of France, is not proved by any other person, you, gentlemen, will be relieved from considering that part of the indictment. Then it

* See vol. 13, p. 348, vol. 19, p. 380.

will depend entirely upon those letters and papers which have been produced to you in evidence; but before I comment on them, it will be extremely necessary for you to lend me your attention in respect to the hand-writing. The only evidence now produced against M. De la Motte, (upon which that gentleman is to live as he has done, with honour, or to die with disgrace) altogether depends upon the certainty of his hand-writing, which must be proved to you by two witnesses. Similarity of hand-writing is no evidence. The opinion of a man, from seeing a hand which he apprehends to be written by a particular person, and comparing that with another paper which appears to be in the same hand-writing, the Court will tell you, is no evidence; because the lord chief baron, on the trial of Mr. Francia, said it was no evidence: because lord chief justice Holt, who was the greatest as well as the best of judges, confirmed the same doctrine, by saying comparison of hands cannot be evidence. You will please, therefore, to attend minutely to the proof of the hand-writing. Don't be misled by the common causes that you hear tried at *nisi prius*, where the slightest proof of the hand-writing is deemed sufficient; because, when a man brings an action on a promissory note given by the defendant, almost any evidence of belief, and having seen him write, will be sufficient; for it is not to be supposed, that a person who brings an action to recover that money of the defendant, is guilty of forgery; but it is to be presumed, that the defendant does it to delay the payment of a just demand, or with the hopes that the plaintiff will not be able to prove his hand-writing; therefore the courts admit of very slight evidence. But consider the difference between a promissory note for five pounds, and a gentleman's life: consider how very easy it is to mistake the hand-writing of one man for another: consider how possible it is that a man may really believe, that the writing which is produced, is actually written by him whom he has often seen to write; and yet he may be deceived. In the case of Francia, a gentleman was called upon the trial, a Mr. Barclay, who was an under secretary of state, or solicitor of the Treasury, (I don't know which;) he told the Court, (though he had seen Francia write for upwards of an hour, and was attending to him while he was writing,) when he was asked whether that was Francia's hand-writing, "that he could not affirm it." Now Francia was acquitted.

I must mention another remarkable case, that happened within these few weeks, to shew how cautious you should be in the admission of testimony upon a belief of a man's hand-writing; it is a fact within my own knowledge; and I call upon the Attorney and Solicitor General to vouch for the truth of the anecdote I am going to state.

It is not six weeks ago, that in a case in

the Exchequer, the Attorney General thought it necessary to fix some criminality upon the defendant, for whom I was counsel; and that was attempted by the production of a petition signed by the defendant, and which was said to be of his hand-writing. The Attorney General thought it proper to produce that petition, and he called a gentleman to prove it, a gentleman by the name of Bate. I hope you know him, because then you will not suppose that I mean to throw any imputation upon him; for he is a respectable old gentleman, in an honourable and very profitable office in the Custom-house; and he was called to prove the supposed hand-writing of the defendant to this petition, and signature at the bottom of it. I really pitied him when he was sworn: I wished that he might not swear it; I guarded him repeatedly against it; I desired him to forbear. I told him the defendant sat by me, who would (if his testimony was admitted) contradict him upon his oath; that I would produce the very person who had written it. But he still persevered—honestly persevered—conscientiously persevered: but he incautiously persevered; for he persevered in swearing, not only that he had a perfect knowledge of the defendant's hand-writing, but that he verily believed the petition was his hand.

Gentlemen, I appeal to both the law officers (I am sure they will do me justice) I proffered the defendant to be sworn as a witness, to prove that it was not his hand-writing; and I actually called the clerk of the defendant, who was accidentally in court, (for I had no idea that such a species of evidence would be given against the defendant) I called the clerk, who said, that while he was at the Custom-house, one of the officers had advised him to write a petition, and present it to the board; that it was a common thing to write a petition in the name of another; and that it did not signify who wrote it, if it was written in the name of the petitioner; that he wrote it himself; and signed the name of the defendant at the bottom of it, without his knowledge. I am sure those gentlemen believed the clerk; and I am sure the judge believed him; and there was not a man in court that disbelieved him; yet Mr. Bate had sworn that he verily believed it to be the defendant's hand-writing.*

Suppose you had been the jury: suppose that piece of paper had been produced, not to determine upon a dozen of hats (which I think was the question there) but to determine upon the life of M. De la Motte: suppose upon that evidence, given by a man of respectable character, given by a man of that age that he soon must be called upon to answer for the crime of perjury, if he know-

* Concerning proof of hand-writing, see vol. 9, p. 864, the Case of Algernon Sidney; vol. 10, p. 726, Spreull's Case; vol. 12, p. 183, Case of the Seven Bishops.

ingly committed it; suppose, upon that testimony, you should have thought yourselves bound in your conscience to have found a verdict for the crown, and that M. De la Motte had been executed (which he certainly will be, if he is convicted;) how many wakeful nights would you have had, how many heart-breaking days would you experience, when you were told you had condemned a man to death upon the testimony of a person who was mistaken, and that the writing was not the hand-writing of De la Motte, but of Lutterloh! Consider the truth of that case; and then, for your own sakes, judge with caution; receive with care the testimony that is given; and do not too hastily determine upon the life of a fellow creature.

Now, gentlemen, let me see how this hand-writing is proved? Lutterloh has sworn that he knows the hand-writing of M. De la Motte. I have made so many observations already upon Mr. Lutterloh, that I mean not to trouble you with more: but this I will say, that if Mr. Lutterloh was an angel of light, his testimony alone could not convict; therefore it is necessary that some other witness should be called to the proof of M. de la Motte's hand-writing.

Whom do they call for that purpose? Mr. Bauer is called, as a second witness, to confirm his worthy friend Mr. Lutterloh. Observe, gentlemen, that by law—I am not wandering from my point, though at present I may appear to do it—but by law it is absolutely necessary, that the list of the witnesses should be given to the prisoner ten days before the trial. It is something singular, that in the first list of witnesses the name of Bauer was not mentioned; and if M. De la Motte had fortunately been tried at the last sessions, Bauer would not have been a witness against him. I do not mean to say but that it was an act of favour that he was not tried; I receive it and acknowledge it as such: but it is something singular that Bauer, the bosom friend of Lutterloh, who carried a letter from Lutterloh to M. De la Motte, who tells you that he carried a letter from M. De la Motte to Lutterloh, who tells you that he knows his hand-writing—it is singular that this ready witness for the crown should never have communicated his knowledge to Mr. Chamberlayne, who, I will venture to say, sifted him to the bottom; (he had not done his duty without it:) and yet, with all his sagacity (and there is not a more sagacious or worthy man living) yet, with all his sagacity and industry, it was never suspected by him, it was never suggested by Lutterloh, that Bauer knew any thing of the hand-writing of M. De la Motte. I am most certain that Lutterloh in this instance was sincere; that for once he has regarded truth: for he did not tell Mr. Chamberlayne that Bauer knew any thing of his hand writing. I believe it to be true, and I believe it from the wretched testimony given by Bauer himself. Heavens! is a man to be

convicted upon the testimony of Bauer? Put every thing you have heard out of the question for a moment, and let this gentleman stand or fall upon the evidence of Bauer. Suppose this case could and did turn only upon his testimony, what says Bauer? "Yes, it is his hand-writing;" not 'I believe;' he is above sheltering himself under his belief, 'it is' his hand-writing: at least, so says the interpreter. I am very sorry the gentleman would not permit me to talk a little English to him: if I had, he would not have passed his examination quite so easy, as through the medium of an interpreter. What nice distinctions he can make, even in the turn, the formation, of a letter! He takes two or three letters from the rest: "No, I will not swear to these, but I can to the others." If all that he says is a perjury, and yet he means to gain credit with you, is it possible for a man to devise a better method than to say he believes positively some are the hand-writing, and that others as positively are not? It is something whimsical: but look at all these papers; compare them with your own eyes, and see whether the one hand is not so like the other, that the man that could swear positively to some, might swear as positively to all. How does it happen, that Lutterloh has sworn, that those very letters are of the hand-writing of M. De la Motte, which Bauer swears are not; and, on the contrary, Lutterloh swears that other letters are not written by M. De la Motte, which Bauer positively swears are of his hand-writing? Can you, will you punish a man with death, upon the opinion of two witnesses who contradict each other, and can coincide in nothing? Ought you not to be extremely careful indeed how you receive this evidence, and watch such witnesses with most jealous eyes?

Thus much, gentlemen, is most certain, that Bauer's knowledge of M. De la Motte's hand is so imperfect, that there are three different papers which he verily believes are not the hand-writing of M. De la Motte, though, as to similitude, upon comparison you can find no difference, and though Lutterloh has sworn that he believes them to be so?

Now permit me to ask, upon what authority is Bauer's testimony founded? It is founded upon a very weak authority indeed. But first of all permit me to observe the manner in which he gave his evidence. If I take him right, he said he came to England only six months ago; and, as soon as he came, he lodged in Charles-street; yet afterwards, in the course of his examination, he confessed he lodged in another street so long ago as last August: consequently he swore to a thing not true, because he had, in fact, been in England eleven months instead of six, and did not lodge first in Charles-street, but in another place. He had a wish to have passed himself off to you as a merchant living in Charles-street; but, when I interrogated him to his merchandise, he dwindles down to a

clerk, and confesses that he had never exercised any other office than the menial office of a clerk. He told you he knew Lutterloh some years ago; that his acquaintance ripened into friendship upon his last coming into England; and that, on the 25th of December, he saw M. De la Motte for the first time in his life; that at that time he brought a letter from Lutterloh, staid a very little while, and did not see him write; that he came again the next day but one, and staid as little a while; that, two days after that, he came again, which brings it to the 29th of December. And now you will find dates a little material. On the 29th, he, for the first time, saw M. De la Motte write. Why, what did he write? He says, he asked him whether he had been at Plymouth or not, how long he had been at Wickham, and whether he had been at Portsmouth with Lutterloh? To these questions he saw M. De la Motte write down his answers; that is, he was in the room when he heard M. De la Motte ask these questions, and was in the room when, as he supposes, M. De la Motte wrote down these answers: but he does not affect, he does not dare to say, that he looked over the writing, or saw the words which M. De la Motte had thus written down. Now would you, or could you believe it possible, that Mr. Bauer should know the hand-writing of M. De la Motte from being in the same room, and seeing him write answers to questions that had been put to him? It does not appear that he ever looked on that paper after it was written. What should he look at it for? I do not believe there is a single word of truth in what he has said. It is the most foolish of all foolish stories. What could induce M. De la Motte to ask those questions? and, having asked them, why should he reduce them into writing? Whether he had been at Plymouth, or at Portsmouth, must be totally immaterial to M. de la Motte. But, Did you ever see him write afterwards?—"Yes, I saw him write some days after." Unfortunately, I am afraid the exact time was not taken down, when M. De la Motte went to Wickham: but you will please to recollect, from the evidence of a Mr. Atkins, for I will not suffer Lutterloh to mend his evidence, that he saw M. De la Motte at Wickham; and in fact he was taken up upon the 5th of January. Now, some days after the 29th of December must bring it too far into January, and M. De la Motte must have been at Wickham at the time Bauer pretends he saw him write the last time in London. If I mistake in point of time, consider my situation, and pardon my errors: I have much to think on, and much to say; this gentleman's life in my hands, without assistance to correct my mistakes, or time to refer to the evidence I have taken down. But what did M. De la Motte write the second, which was the last time? Why, a letter, says he, to Mr. Lutterloh; and I saw him put a bank-note into the letter. I asked

him what De la Motte had said in that letter: his answer was, "I cannot tell; I did not see that." If he did not see what was in the inside of the letter, has he a sufficient knowledge of the man's hand-writing to tell the character in which these words were written, when in fact he did not see the words that those characters composed? Is not that sufficient to blast the testimony of any man? but is it not abundantly sufficient to blast the testimony of the friend of Lutterloh? If it rested upon Bauer's testimony alone, is it possible you could hesitate a moment about your verdict?

Let us see, then, how much the case is improved by the next witness, a very reputable, a very respectable gentleman, M. Le Cointe. He says, that No. 11, which is the letter to the commandant, is not his hand. He says, "I have seen him write very seldom: I have doubts about No. 15, and doubts about No. 20." Then there is a note shewn him, which Lutterloh has told you was written by M. De la Motte, except only one or two words filled up by him. Observe what Le Cointe says upon this note! He says, "The words 'ready money' I believe to be the hand-writing of M. De la Motte; but I do not believe the rest is." Here then, you see, is the same disagreement as there was between Bauer and Lutterloh; for there are in this note twenty or thirty words, besides 'ready money,' which Lutterloh swears are the hand-writing of M. De la Motte, except one or two words inserted by himself. M. Le Cointe as positively believes they are not. Surely this observation, founded as it is in truth, will make a very material impression on your minds. Observe likewise, that M. Le Cointe is asked, how often he had seen him write. He says, that he has seen M. De la Motte write his signature different times; but, except in one instance, he has never seen him write any thing but his signature. Now suppose, gentlemen, for the sake of argument, M. Le Cointe had positively sworn that he had never seen M. De la Motte write any thing but his signature; and I will take that to be either D'Akerman or De la Motte: do you think it possible that any gentleman could swear with such certainty, as to authorise you to take away the life of a man upon his knowledge of the hand-writing? If he had only seen him write his name, he would not have seen him write more than half-a-dozen letters in the alphabet. Would you believe a man could swear with that degree of credit that he ought? I do not mean to throw any imputation upon Le Cointe; I dare say he believed it. But will you believe, that, from seeing a gentleman write nothing but his signature, it is possible to swear to a whole letter? Has Mr. Le Cointe seen him write any thing else? He says, "I rather apprehended he did once give me his address at Hampstead; but I am not certain of it." If he is not certain, it can be no evidence. You would not receive such

testimony in a question of property; therefore you will not think of receiving it when M. De la Motte's life is at stake. He adds, that "he once wrote a note in my shop." What are the contents of the note? what were the words of it? "I don't know." The same observation I made upon Bauer. I do not mean to class Bauer and Le Cointe in the same scale of credit: I am sorry to see him in such company as Bauer and Lutterloh, even in a court of justice: but the same observation, I say, will hold here; he can recollect the characters which form the words, when he does not recollect the words themselves. I perfectly well know why Mr. Le Cointe believes this is the hand-writing of M. De la Motte; not from the letters he has seen him write, but from the notes he has received in his name. "Sir, do you form your judgment from these notes alone?" If he had answered in the affirmative, the court would have told him that was not evidence, because, if he had never seen him write, though he had received ten thousand notes from him, it would be no proof of his hand-writing. I assert this proposition to be law; and I am sure I shall not be contradicted. Suppose he has received notes from M. De la Motte; is that to be evidence to convict? Might not his servant have written these notes? If that was to be evidence, every man of fashion in this town might have the spurious notes of their servants palmed upon them for their own, as they will not fatigue themselves with writing common notes of civility and invitation.

Put these notes out of the question, and see then whether my observations upon Le Cointe's belief are not founded in good sense; one of which has been upon the signature, consisting of six letters; another, upon the address at Hampstead, which he does not know he ever gave him; and the third, upon a note he saw him write, but is a stranger to every syllable of the contents.

I find the law officers of the crown, of whose ability and sagacity you can have no doubt, from the high situation in which they are placed, assisted as they are by the first criminal lawyer in England, have thought the evidence against M. De la Motte, upon the hand-writing, insufficient to convict him; and therefore another witness was produced for the purpose of shewing that there was a partnership between him and Waltrond. A partnership in treason, by which the act of one should convict the other, is a new idea, reserved for these enlightened times. For this purpose they call Elizabeth Hannet, to prove that Waltrond and M. De la Motte had been seen together in her house; imagining from thence, that this species of evidence (if Waltrond had, in your opinion, conveyed all this criminal correspondence to France) would operate so strongly upon your minds, as to induce you to find a verdict against M. De la Motte, though they really believed you were not justified to find that verdict upon the testimony of the

hand-writing by Lutterloh, Bauer, and Le Cointe. But is there any evidence of this connection? Even Elizabeth Hannet, that is expressly called for the purpose, after hunting round the court, and looking in De la Motte's face without knowing him, retires without giving any evidence. Was it a material part of their case that a connection should be shewn between Waltrond and M. De la Motte? Yes! their judgment told them that they could not convict him without that connection being proved; and, by calling Mrs. Hannet, they admit that the connection was not proved before. Then, gentlemen, in confirmation of my own observations, I have the opinion of the Attorney and Solicitor General, that the proof of the hand-writing was too weak to convict; that Lutterloh's evidence could not gain credit; that a connection between Waltrond and De la Motte must be substantiated by Mrs. Hannet, who did not even know the face of M. De la Motte. It is strange, that, material as they thought this fact of connection, in which I must beg leave to differ from them, they have called Mrs. Hannet, who cannot prove it; and they have not called the wife of Waltrond, who is one of their witnesses, and now waiting in the next room to be examined; whose name was delivered to M. De la Motte in the original list of witnesses. How happens it that Mrs. Waltrond, the wife of Mr. Waltrond, that they had subpoenaed as a witness, that they gave us notice they would produce, whose testimony we expected to have received—how happens it that she has not been called to prove that fact which they themselves thought so important? Whether M. De la Motte was, or was not, connected with Waltrond, this woman could have told you with precision. I trust, this observation will have its weight. I wish to know likewise why Mrs. Lutterloh is not called; not the wife of that abandoned villain, but a lady of character and fortune, the niece of the late bishop of London, whom I expected to have seen here as a witness; because Mrs. Lutterloh's name is likewise given as one of the witnesses for the crown, and she has been waiting all day to give her evidence. I would ask the gentlemen employed for the crown, whether they think it becomes the dignity of their high station, in a cause of life, to keep back any witness which they have given us notice they will produce, especially when that witness is of an unexceptionable character? This is not a contest between two counsel for victory; but it is a contest of innocence against guilt, of life against death, and honour against disgrace. Would it not have become them to have produced those witnesses, that you might have heard from their mouths what evidence they could give? Undoubtedly they would not have given Mrs. Lutterloh the trouble to attend; they would not have given us notice that she was to be a witness, unless they thought she could give evidence that was material. I am

now to presume, that they have kept her back because she would have given material testimony for the prisoner, and testimony that you must have believed, because the credit of that lady stands as fair, and as high, as the credit of any lady in the universe. If it is possible for human wit and sagacity to frame an apology for keeping back Mrs. Waltrond and Mrs. Lutterloh, I am sure those gentlemen have abilities to do it. I implore them now to call those two witnesses; I dare them to it. Let those ladies tell the court and jury what is the nature of the evidence they have communicated to Mr. Chamberlayne; let them tell you, upon their oaths, what evidence they can give. I shrewdly suspect their evidence would be, that they know the hand-writing of M. De la Motte, and that the hand-writing sworn to by the detestable Lutterloh, by that suspicious witness Bauer, and that ignorant witness Le Cointe, is not the hand-writing of De la Motte. I shrewdly suspect that hand-writing to be a forgery, a forgery of that wretch who entered into a conspiracy to cheat two kingdoms, and who acknowledged an attempt to cheat M. De la Motte, by substituting an imaginary friend, that he might get two thirds of the plunder of the nations he was betraying. These things merit your attention, and I trust you will give them all possible weight.

In respect of those two letters produced from the post-office, one of them only can be received in evidence. Those letters come under the charge of sending letters to certain subjects of the French king. The first letter was stopt at the post-office. I am very ready to admit, that, if the letter was sent and delivered at the post-office, it would be a sufficient act of sending it to certain subjects of the French king, not meaning to give up the observation upon the hand-writing. The second letter that is produced, sir Stanyer Porten swears to the reality of; but he does not swear that he ever received that letter from the post-office: he says, the cover has been lost. It is astonishing to me, that with all his ability, care and assiduity, he should have lost that which is alone material in this indictment; for that great man has lost the cover, without which this letter cannot be admitted in evidence. Be it De la Motte's hand-writing, for the sake of argument; be it the letter that is now produced in evidence, that sir Stanyer Porten had given to Mr. Chamberlayne; if it does not appear that that letter was sent to a certain subject of the French king, it will operate nothing. I will admit, that it might be directed to a certain subject of the French king; but if it was not sent, or delivered, it is not criminal. Suppose a letter highly criminal was taken from the writer by force, when he was going to destroy it. Shall that rise up in judgment against him which he wished, and would have destroyed, if it had not been taken from him? It does not appear that this letter ever was in

the post-office; for sir Stanyer Porten only tells you, that he found it in the secretary's office. His finding it there shews a strange neglect somewhere: but we are not astonished at public negligence; it has long been too common. The letter being found in the office, shews they thought it of very little importance: and let me add too, they thought of very little importance the other letters that had been sent; for, though they do not appear in evidence, yet of so little importance were those letters which Mr. Stewart, with such assiduity, used to be riding backwards and forwards to London, to shew to sir Stanyer, and even abler men—of so little importance were they, that they sealed them up again, and sent them to France laughing at the intelligence they conveyed; for the letters were merely intelligence of that which the London Courant and General Advertiser had before communicated to the public.

Gentlemen, I will trouble you but with a word more: I will for a moment suppose, that which I trust you never will believe, that all these papers which have been produced in evidence, and sworn to by the witnesses as the hand-writing of M. De la Motte, were really written by him: are the contents of those letters treasonable? have they conveyed any treasonable intelligence to the enemy? For it is not sending a ballad to the enemy that is treason; it is not, as the indictment charges, sending to the enemy that Darby commanded the fleet at one time, and Hardy another; for, God knows, it is very immaterial to France whether Darby or Hardy commands: that is not the intelligence that is comprehended under the article of treason. These letters differ extremely from any that have been produced in a court of justice in high treason. In the case of Francia,* who was a foreigner, the charge against him was not only for sending intelligence to the enemy, but for pressing the enemy to send arms, ammunition, and money, to supply the rebels in this country in supporting a rebellion that was then commenced, or in the act of commencing. That was a charge of a very different nature; but even in that, Francia was acquitted. In the case of Hensey,† one of the letters, and that which operated to his conviction, was pressing the enemy to make an invasion upon this country. I am inclined to think that was the material part of the evidence upon which that indictment hinged; that it was the part upon which the jury gave their verdict; because I observe that lord Mansfield, when he summed up to the jury, says, "in one of his letters he had even invited the enemy to invade his native country, and to bring war and destruction into the heart of it." That is the letter that lord Mansfield particularly lays his finger on. Observe, likewise, what lord Mansfield says,

* See vol. 15, p. 898.

† Vol. 19, p. 1341.

“ that the guilt of this offence arises from the nature of the correspondence, which is calculated to betray the secrets of his king and country to the enemy.” Now, gentlemen, remember that it was not for conveying intelligence only, but because Hensey conveyed correspondence, the nature of which was calculated to betray the secrets of his king and country. Adopt lord Mansfield’s rule in the present case. I am now supposing that all these letters are proved, and are of M. De la Motte’s hand-writing. Is the printed list of Haslar-hospital a secret? Is it a secret that there were certain vessels lost and damaged in a storm in the West-Indies? The moment the news came to England, it was publicly known; and charity was universally throwing in its mite to the unfortunate sufferers at the time that this letter is supposed to be written, which was to convey that important intelligence to France, that was known to every man in England, that was known to every man in Europe. But there is a third species of intelligence; there is an account of commodore Johnstone’s squadron lying at Spit-head. Is it possible that any man, who could read, could be ignorant of it?—Had not commodore Johnstone’s squadron been lying for weeks, for months, waiting for—God knows, what—waiting for seamen, soldiers, provisions and orders? And yet this is the important secret that has been conveyed to the enemy, for which this unfortunate gentleman is to forfeit his life! In a word, supposing that it is his hand-writing, supposing that it is sufficiently proved; then, I say, it is not that kind of intelligence that ought to put a man’s life in hazard. I will admit, if you please, that it is wrong, that it is improper; because no man that comes into this country, and lives under the protection of our laws, ought thus to demean himself. But this is not a question of political propriety, or of moral rectitude: it is not whether M. De la Motte has acted with the utmost purity and innocence; whether he has acted with the most perfect honour: but the question is, whether he has so acted as to forfeit his life for treason? If it is criminal, let me tell you, M. De la Motte’s punishment has not been trifling: that poor gentleman has now been confined in a dungeon for seven months. When I say a dungeon, gentlemen, I ought to say a tower: he has been confined, if you will permit me to play upon the words, in a tower, in the Tower, for seven months; four of which, denied the use of pen, ink, and paper, and the sight of any human being except his keeper. For the last three months his attorney and his counsel have had access to him, because the law commands it. I trust, therefore, you will think, if this gentleman’s crime is short of treason, that his punishment has been only short of death.

Gentlemen, I had almost forgot to open to you some evidence which I am desired to produce. I do not know that it is necessary;

but I wish to shew you, that what I have said of M. De la Motte is not my imagination, nor the imagination of the prisoner. Some part of his history has been proved to you by the witnesses already examined. I mean to shew you, that he has dealt in those articles which Roger mentioned, who laid out 300*l.* for him in the space of four or five months for prints only. Now, as they have called Roger, I am to presume he is a witness that deserves credit; because it would be too much to suppose they have called none but bad, and kept back all the good witnesses. I will not rank him with Lutterloh and Bauer, but with Mrs. Lutterloh and Mrs. Waltrond. I will call to you two print-sellers, who will tell you they have often supplied M. De la Motte with prints; not common prints that were to be a cloak to iniquity, but that he was most attentive to the prints that he purchased; that he gave the highest prices for proof prints, which shews he meant them for the purpose of sending abroad, and not for the purpose of screening an illegal correspondence he was carrying on; for that might have been done as well with the common prints, as with the finest impressions. I shall call these witnesses to confirm Roger’s credit and testimony, if the gentlemen attempt to impeach the credit of their own witness, either by observation or evidence.

I will no longer trespass on your patience; but I implore you to recollect, that, if these papers convey such secret intelligence as constitute the crime of treason, the intelligence must be proved to be in the hand-writing of M. De la Motte by two witnesses, to whom you can give credit. Remember the mistake of that respectable gentleman I mentioned to you in the cause in the Exchequer. Impute the same mistake to the frailty, if not to the wickedness of human nature, in the present case. If you think it possible that these witnesses may have made an involuntary mistake, take care that you do not make an intentional mistake, by stamping an authority on their credit by your unequivocal belief, which must deprive of honour, and of life, that poor friendless foreigner at the bar.

EVIDENCE FOR THE PRISONER.

Pictor Mar. Picot sworn.

Examined by Mr. Peckham.

What are you?—A print-seller and engraver.

Have you ever sold any prints to M. De la Motte?—I sold some to Mr. Roger for M. De la Motte.

Were the prints you sold him valuable, and of the best impression, or the refuse prints of your shop?—Some of the best impressions, and duplicates of them.

To what amount were the extent of your transactions?—I cannot tell; I always was paid ready cash: it was about 100*l.* I believe.

Cross-examined by Mr. Attorney General.

You are a tradesman that keeps no cash-book, I take it?—No.

When was it you sold these prints?—In July, September, and November, 1780; but I cannot tell exactly: as I was always paid ready cash, I took no memorandum of it.

Do you know a Mr. Waltrond?—I saw him once at my house with Mr. Roger.

You never saw M. De la Motte at your house?—Never in my life.

William Faden sworn.

Examined by Mr. Peckham.

Are you a print-seller?—I am.

Have you ever sold any prints to M. De la Motte?—Yes; and they were the best prints that could be procured. I sold him, as near as I can take from my books, to the amount of 93*l.* 10*s.* 6*d.* between March 10th, 1779, and Dec. 29th, 1780.

Do you know of any other articles he used to send abroad, Birmingham goods, or trinkets, or any thing of that kind?—No.

Cross-examined by Mr. Solicitor General.

You sell a great many maps, I believe?—I do.

Look, and see whether that is one of your bills? (shewing the witness one).—Yes, this is my bill.

What is that “Atlantic Neptune”?—Some maps, that are published by order of the lords of the Admiralty, of America.

Are they reckoned accurate?—They are.

Do they particularly mark out, and with accuracy, the ports of America?—They are reputed so.

Mr. Peckham, They are sold publicly in your shop?—Yes.

It was not a secret to the lords of the Admiralty?—No.

Mr. Solicitor General. Look at that other bill; that is one of yours, I believe?—Yes, it is.

I see the last article is, three charts of the Atlantic Ocean?—Yes.

What part does it comprehend?—It is a general chart to exhibit the two continents of Europe and America.

Are they reputed charts of authority?—It is the best of the kind.

I ask you only for form's sake, whether these charts do or not delineate accurately the coasts of Europe as well as America?—They are understood so, as far as that small size can do.

There is one article of 51*l.* do you recollect whether that article included maps, or prints only?—It refers to that bill that I just now had in my hand.

Roger called into Court.

Examined by Mr. Peckham.

You appeared, I believe, before the grand jury?—I did.

Do you know Mr. Lutterloh?—Yes, I was with him.

Have you known Lutterloh for any time?—I have seen him three or four times, once at Charing-cross, and once at Plymouth.

Did any conversation pass between you and Lutterloh before you went into the grand jury room, and when you came out from them, respecting M. De la Motte?—Yes, and I told that story directly to Mr. Goss, who was my governor, I was so struck with it.

What was the conversation that passed between you and Lutterloh, that you told to your friend Mr. Goss?—I observed Mr. Lutterloh was quite low and affected; Mr. Goss said he looked very affected: soon after, Lutterloh came and spoke to me in French; he said, that “this was a very bad piece of work, and a bad affair for us.” I said, You do not lose nothing, but I do; it is more unhappy for me than can be for any body. He said, “I am very sorry, but M. De la Motte will be hanged.” I said, You came here to find the bill; tell the grand jury, the judge, the jury, all justice. He said, “Don't you know the ministry will be very glad to have their vengeance for the death of major André in this?” I said, How can you say so? what character you give of the ministry! If they did know that, they would take him up for taking their character; and I would not speak to him. When Lutterloh was come back from the grand jury, he said, “I know very well the bill will be found.” Because for what, said I? He said, “Because I swear any thing, and to the writing too:” he said, he had done it before the grand jury.

Court. What did he say he had done before the grand jury?—A. That he had sworn to the hand-writing. I said it was a shame; I don't know who was next to me; I take it it was Ratcliffe: I said, there is some man that deserves any punishment. He said, “he was sure that it would be found.” I said, “How do you know that? If the bill is not found, you cannot make it found yourself.” “Oh,” said he, “I have told enough, and I can swear it was his writing.” I never spoke no more; but after that we went to dinner, and at the dinner he kept such discourse I was ashamed to hear.

What was it?—I don't remember.

Did he say any thing else to you?—I do not remember that he spoke any thing more at the same time: at dinner he said, “I know very well I could work better than him; I should be glad he would be hanged, because I could work by myself a great deal better than we do together.”

Cross-examined by Mr. Attorney General.

Lutterloh was no friend of yours?—I never knew him to be no friend.

Was this conversation in French?—Part in French, and part in English. I never heard him speak French but that day.

I believe he never spoke French before nor

since: he was visited with a gift that day, that he lost in a moment again?—I promise you he can speak French perfectly well.

Jasper Lappel sworn.

Examined by Mr. *Peckham*.

Do you know Mr. Lutterloh?—Yes; I have known him from eight or ten years ago.

What situation was he in when you first knew him?—A servant. I knew him afterwards keeping a chandler's shop in Castle-street, Leicester-fields.

Have you ever had any conversation with him about your going to France?—About his going to France, he made a kind of proposal to go to France, as he said there was a prince in Germany (I have forgot his name) that wanted money, and that he had several thousand stand of arms, and he would endeavour to sell them for him to the American Congress, and would advise with Dr. Franklin about it: he was to write to Dr. Franklin, to see if they could agree for them for the Americans.

You did not enter into this scheme with him?—I did not.

Is he a man you would trust, credit, or believe, after ten years knowledge of him?—I should rather doubt.

Is he a man of good or bad character?—I know no further of his character than what I have stated.

Cross-examined by Mr. *Attorney General*.

How long is it since your acquaintance ceased?—The exact time I cannot tell.

Mr. *Wildman* sworn.

Examined by Mr. *Peckham*.

I believe Mr. Lutterloh lived some years ago with you as a servant?—He was my servant in the years 1769 and 1770; about a year and a half, I believe, in the whole.

When you dismissed him from your service, did you give him a character?—He never asked one, nor did I give him one. He left me, I think, but I cannot be accurate to the time, in 1771, or the latter end of 1770.

I can only ask you a general question, which is, if he had applied to you for a character, should you have given him one?

Solicitor General. I object to that question; it is a very improper one.

Mr. *Peckham*. From what you know of this man, what is his character, good or bad?—A. While he lived with me, an accident happened; but he certainly behaved very well, and that accident I had no grounds to impute to him.

How came he to leave you?—I had followed the accident up as far as I could; but I could not trace it at all. I was determined to discharge him, not upon that ground, nor with any imputation of that sort to him when I discharged him.

You did not tell him so?—No; neither

told him so, nor reported it; for I had no grounds.

If that accident had not happened to you, should you not have kept him?—I liked him extremely well as a servant.

If that accident had not happened to you, should you not have kept him?—I rather think I should not.

Cross-examined by Mr. *Solicitor General*.

Did you afterwards lend Mr. Lutterloh 15l.?—In the settlement, when I discharged him, there might be a balance; but certainly I lent him nothing afterwards.

Mr. *Peckham*. We have been told you lent him 15l. upon his note. Is that true?—A. There might be a balance; I have endeavoured to recollect it, but could not: I mean, he might be in my debt, and I might take a note for it; but I can't speak with any certainty.

Mr. *Peckham*. He has said, that, some months after he left you, you lent him 15l. upon his note?—A. Nothing, to my recollection, passed with him about money from the time that I discharged him.

You have no recollection of it?—No.

I do not know whether you recollect that he was afterwards in a shop?—I recollect to have heard it.

End of the Evidence for the Prisoner.

Solicitor General. Gentlemen of the Jury; It becomes now my duty to address you, upon the subject of the manner in which the present prosecution has been supported, and the way in which the prisoner has been defended.

I shall make but a very few observations upon the very long defence of my learned friend; not from any incivility or disrespect towards him, but because it appeared to me then, as it does now, upon the best recollection I have of the observations he has made, that, notwithstanding they employed a very considerable part of your time, yet they have very little relation to this cause; though some part of the argument related to other causes, the history of which I am unacquainted with, the history of which he did not explain to you, but upon which I can safely pronounce, that they had nothing to do with this cause. I do not mention this as any reproach to the learned gentleman; it certainly was his duty to offer what arose out of the case; and when he found himself tempted to deviate into matters that had no relation, nor any connexion with this cause, he did it because he thought he might thereby withdraw your judgment and your attention from the merits of this cause.

One or two things, however, Gentlemen, it is my duty to take notice of.

And first, the old and common observations made by way of exciting some compas-

sion towards the prisoner. And very largely indeed my learned friend explained to you, that which is perfectly new to me, though I have had the honour of practising in the court from which he supposes those partialities to be derived—that partiality was a principle of justice; and that, because the present prisoner is a foreigner, you, in judging upon the accusation against him, will act honourably if you act partially; that is, if you judge according to the arguments which the counsel urged to you, not founded in fact, nor supported by reason, if you dismiss the evidence from your minds, and, upon considerations of indulgence and favour to a foreigner, you shall pronounce that foreigner innocent, when you would have convicted one of your countrymen, that such a conduct is honourable; that is, that it is honourable to break your oaths, to determine against that evidence according to which you are sworn to determine. I conceive it would be very dishonourable. I ask of you nothing more than this, that you should determine according to the evidence; not for him because he is a foreigner, not against him because he is a foreigner; but according to the true merits of the case laid before you, and according to that oath which I am sure you have not forgotten, though my learned friend seems to have forgotten you have taken one: and, according to that oath, and the evidence before you, I have not the least doubt you will determine. I must beg you to forget a little the lamentations over the misfortunes of this unhappy man, as he is called; I cannot agree that he is unhappy in the sense in which the counsel wishes you to consider him; that, being innocent, he is in danger of being oppressed. What marks there are of oppression, or what proof of innocence, I need not take up your time in considering; but I will venture to say, that there is nothing unhappy in his situation, unless it be unhappy to commit great crimes, and to be detected in the commission of them; to be brought to prosecution, and to be in danger of punishment. If this denominates a man unhappy, then he is properly to be pronounced unhappy; but if it be addressed to your compassion, that there is any thing particularly distressful and afflicting in his condition, except as he is a person accused, and a prisoner, there is no foundation for it: for, helpless and destitute as this foreigner is of all assistance and support, he has, you see, the advantage of the ablest counsel that the English bar affords; that counsel assisted with an attorney, with witnesses, with every aid that a man in that condition can possibly have; and if the most illustrious of our countrymen was to be called into judgment for a similar crime, he could not possibly have any one aid or support, of which the man you are now trying is destitute.

I will not resort to any arguments to move passions of a different sort, because I would

have you actuated by none, but form your judgment upon the evidence only. This country would be in an unhappy condition indeed, if men protected by its laws, deriving every comfort and happiness which the constitution of this country affords to those who live under it, could with impunity commit the crimes with which the prisoner is charged, and, when those crimes are proved upon them, could escape punishment, owing to any false and mistaken compassion: then all the efforts which we are making to resist the dreadful combination of our numerous enemies, might be in one moment frustrated and defeated by such intelligence as the present prosecution charges the prisoner with having either communicated, or endeavoured to communicate, to the enemies of this kingdom.

Some observations have been made, reflecting, in a peculiar way, on the conduct of this prosecution: I am very sorry they were made, because it obliges me to give an answer to it, which I should otherwise not have thought it becoming me to give; it forces me to express an opinion of my own, which, standing here as an advocate, I ought not to wish should have any influence with you. God forbid, that the life of any man should ever depend upon the opinions of the counsel in a cause! but my opinion I must give to you, because I have no other answer to make, but that very complete one, to a charge which is brought against those who conduct the prosecution. The learned gentleman told you of two persons; a Mrs. Lutterloh, and a Mrs. Waltrond, whose names were inserted in a list given to the prisoner, as the witnesses who might be produced against him, and which persons have not been called. I need not desire your attention to any other reasons for not examining those witnesses, than that one is the wife of Waltrond, who has acted so considerable a part in this business, and who is now fled to France, to escape the punishment which would have awaited him in this country; and the other, Mrs. Lutterloh, is an aunt to the witness whose testimony you have heard.

Is it the business of counsel to produce ten witnesses to prove that which is sufficiently proved by two, three, or four? and, if a counsel is of opinion, as I am most clearly, that every point we could prove by fair evidence has most clearly been evinced by the witnesses that have been examined, would it not be wasting time? It was my opinion that it would, and therefore I declined examining those witnesses. They were very properly prepared to be examined, because no person can foresee what will be the evidence of the witnesses; and therefore it is proper not to rest upon one, two, or three, but to have others ready, if either the health or the memory of those we first produce should happen to render them incapable of discharging that duty that is expected from them. My learned

friend supposed those witnesses were not produced by us, because their testimony would have been in favour of the prisoner. The gentleman whom he examined told him they are attending; and though he argues upon the supposition of those witnesses being in possession of facts which would be of advantage to his client, his own judgment informs him that it is safer for that client that those witnesses should not appear, for he does not call them. This, I conceive, you will think a sufficient answer to that imputation upon the prosecution. You have heard a great deal from my learned friend relative to the nature of the crime; and, as it is now extremely late, I shall endeavour to explain to you very shortly the crime with which the prisoner stands charged, and then apply the evidence that has been given to prove that charge, and shall take some notice of the efforts of my learned friend to obviate the weight of that evidence.

You are now trying the prisoner for the crime of high treason, which is described in two different ways: one is what the law calls compassing or imagining the death of the king; the other, adhering to the enemies of the kingdom. The nature of the crime in general is giving intelligence, or endeavouring to give intelligence, to the enemies of the kingdom. Now, whoever gives intelligence to the enemies of the kingdom, is judged by law to imagine the king's death, because he endeavours to assist the enemies of the king, and of the kingdom, in pursuing their war and hostile attempts against this kingdom, one of the great ends of which is certainly the destruction of the sovereign upon the throne; and therefore the law has wisely again and again decided, that (for instance to take one fact) sending a letter of intelligence to an enemy at war with this country, is an open act, proving the imagination of the death of the king in the mind of him who sends it. Whoever sends intelligence, or employs another person to send intelligence, to the country at war with this, does adhere, in other words, does aid and assist the enemies of this kingdom; and it makes no difference in the crime, whether the intelligence actually reaches the enemy, or whether the assistance intended to be given is completed: he who does an act in order to assist the enemy, completes his guilt, whether the enemy receives that assistance or not. My learned friend mentioned the case of Dr. Hensey, who was tried for a similar crime. Why he referred to it I don't exactly know: there are four lines in the report of that case, which most clearly comprehend the law upon this subject: "Letters of advice and correspondence and intelligence to the enemy, to enable them to annoy us or defend themselves, written and sent in order to be delivered to the enemy, are, though intercepted, overt acts of both these species of treason;" that is, of imagining the death of

the king, and adhering to the enemies of the kingdom. That law is as old as the kingdom. You heard a statute of the 25th of Edward 3 alluded to, which is commonly called the Statute of Treasons: but that statute made no law; it only declared what the law was, and restrained the crime of treason, which was before more extended, and declared that certain acts, which before that statute were treason, should not be so any longer. I need not refer to law books to prove this, because you cannot for a moment doubt that what I have described to be treason must be treason. How can any state exist, how contend with an enemy, if it is to suffer within its own bosom men employed to give intelligence of all its operations, to those with whom it is at war? One man so employed, may often times do much more mischief to the country of whose operations he gives intelligence, than an army of 50,000 men. It is true, as my learned friend tells you, some overt act must be proved. So long as the designs of a man rest in his own breast, and don't proceed into action, they are not the subject of this law: but if he does any act shewing that imagination of the death of the king, or which act has a tendency to aid the enemy, in pursuance of this intention, he is guilty of high treason: and the only question you will have to decide here, is whether any such act is proved, that either one act is proved by two witnesses, or two acts proved one by one witness, and another by another.

These are the general observations, and the only ones, as it seems to me, that I am under any necessity of making to you. Let me now state to you the particular acts that are here stated by the prosecution, as constituting the crime of the prisoner. And I think they may be reduced to four.—The first is, sending intelligence, with an intention that it should be delivered to the enemy.—The second is, collecting materials, in order to send intelligence.—A third is, hiring Ratcliffe, and paying him for the purpose of conveying that intelligence.—And a fourth is, employing and hiring Lutterloh to gain and to send intelligence to the enemy.—Now then let me beg your attention to the evidence that has been given. That which is proper to begin with, though it is the last almost in point of date, is the apprehension of the prisoner. M. De la Motte is taken at his own lodgings, returning from a journey: he had been then certainly at Lutterloh's: upon his person are found certain papers. This is followed by the apprehension of Lutterloh, by several papers being found in Lutterloh's garden, many of which were written by the prisoner: he is proved by Lutterloh to have been employing him for a considerable space of time, in order to gain intelligence to send to France, and which Lutterloh understands to have been sent to France. Lutterloh goes to France also with the pri-

soner upon this business. You farther find, that during the period in which he has employed Lutterloh to gain intelligence, he, as well as other persons who are named, employed one Roger to carry packets to Ratcliffe, which packets Ratcliffe was engaged to carry to Boulogne: he is hired at 20*l.* a trip, and is to be paid 100*l.* at a certain time: he is told he is go very often, and he does go very often, and he himself has an interview with the prisoner. I say nothing to you of the particular contents of the papers that were actually put on board Ratcliffe's boat, and carried by him to France, because they have not been proved; but there are two letters that are in proof, one produced by Mr. Todd, the other by sir Stanyer Porten, addressed to a Mr. Grolay, in Richlieu-street, in Paris, written by the prisoner, and containing intelligence.

This is in general the nature of the case. If it is proved, can there be a doubt that he sent intelligence? Did he not send the two letters found in his own hand-writing, which were stopped at the Post-office? Did he not send those papers by Ratcliffe, which according to the evidence (which I shall presently shortly state to you) could be nothing but intelligence to the enemy, with which he had been furnished by Lutterloh, as well as from other means? If he hired Ratcliffe to carry intelligence to the enemy, even although no intelligence had been actually carried, yet there can be no doubt but that is an overt act of high treason. It proves his imagination (as the law calls it) of the death of the king: it proves his adhering to the enemies of the kingdom. We have also proved his hiring Lutterloh to get information for the purpose of sending intelligence to the enemy; for when he is taken, there are very material papers found upon him: there are long lists of ships, in which their situation, their victualling, their supposed destination, are particularly described; and there is an account, from an hospital at Portsmouth, of the state of the sick. With what possible view could these materials have been collected? After this, if you believe what is proved by Lutterloh, by Ratcliffe, and by Roger, as well as by the letters of the prisoner, which have been proved over and over, and which shew him to have been in this constant habit of sending this intelligence to the enemy, can you have a doubt that the intelligence was collected for that very purpose? And if it was, there is an end of the case.

Now the next thing I beg your attention to, is the several papers that were found in Lutterloh's garden. One, you will find, is a letter dated in 1778; another a letter dated, 1779, in which mention is made of coals, in which they never dealt. In another he is speaking of his promises to Lutterloh, and in a language which beyond all doubt shewed what was the nature of the negotiation and

correspondence between them. Besides that, there is a paper called 'Instructions,' which contains particular directions to Lutterloh to send two cutters, one to France, and the other to Spain, the moment that the squadron under the command of commodore Johnstone should sail. There are also covers directed to the commandants of different French ports.

These are the papers found in Lutterloh's garden, almost all of them in the hand-writing of De la Motte. I should indeed say all, because the proof goes to all of them. Then does it not in the strongest manner prove the employment of Lutterloh? Add to that the evidence of Ratcliffe, and of Roger, with regard to that employment. But, in order to get rid of this testimony, of all of it indeed except the papers that were found upon the prisoner—for as to them there is no possible answer to be given; for Jellous, who took him, proved them to have been upon his person, and to have been thrown away in that hurry and confusion which a guilty man feels when he is apprehended; Lutterloh proved them to be papers which he had given him; one of which he procured, the others he himself prepared—to get rid of all this evidence, except relative to what was actually found upon his person, you have a prodigious long criticism upon the hand-writing of De la Motte, as it is proved in the papers found in Lutterloh's garden. If this man's hand-writing is not proved, how is it possible ever to prove a hand-writing? or when did you see or know of a hand-writing being proved? You have heard a great deal of similitude of hands: that might do very well for the purpose of my learned friend; but it is nothing to the question, because this is not proved by similitude of hands; his hand-writing is proved by men who have seen him write; and they don't speak rashly, but with consideration. Mr. Lutterloh, who has seen him write, who saw him write the greater part of these, proves nearly all of them.

What is the next witness, Mr. Bauer? He was introduced to De la Motte by Lutterloh, and was employed by him. He sees him write twice. In what manner does he give his testimony? He does not swear roundly to every paper that is put into his hand: no, he is cautious; he excepts two or three, he cannot venture to say he thinks those the hand-writing of the prisoner; they may or not be his hand-writing; but he doubts about it. Is this the language of a man who speaks rashly, and at hazard? or is it not the evidence that you would expect from a man exercising his judgment, and speaking soberly, as that judgment directs him? You have also the testimony of Mr. Le Cointe, a gentleman of great character, with whom the prisoner kept money: he says 3,000*l.* have passed through his hands in a little more than two years; he proves the hand-writing to, I think, all but two of these papers; and as to them, according to his judg-

ment, they are not so much like De la Motte's hand-writing as the others: but to all, excepting those, you have three witnesses, acquainted with his hand-writing, who prove them to be his hand-writing; and Mr. Le Cointe has not only actually seen him write, but has corresponded with him, has had notes from him; so that the idea of his hand-writing is impressed upon Mr. Le Cointe as strong as you can naturally expect it to be. Then what becomes of all that long-laboured criticism upon similitude of hands? Similitude of hands is when a paper is proved to be written by a man, and another is compared with it, and then, from the likeness between the two, the conclusion is to be drawn, that that must be written by him. No, says the law, that is not proof of the hand-writing, because there may be a forgery, an imitation; but the character of a man's hand-writing is known just the same by seeing him write, as you know a man's face by observing his features. The character of a man's writing is capable of proof; and in this case you have it proved by three witnesses.

It did not escape you, I am persuaded, that some of these letters were sealed with the same seal that Mr. Le Cointe has had affixed to letters sent him by M. De la Motte. Mr. Le Cointe's manner of proving the hand-writing does him great credit; he speaks with a caution which ought to be observed where a man's life is at stake. As to a little note which Lutterloh saw De la Motte write, in which are put down those sums of money which, according to the proposed plan and bargain Lutterloh and De la Motte were to receive from the French ministry, if, in consequence of their communication to them, any of our ships should be taken; Mr. Le Cointe says, "Upon the whole, I don't think any of it is M. De la Motte's writing excepting the words 'ready money.'"

Then, gentlemen, falling in with the hand-writing, what is the evidence of Lutterloh? That he was employed by the prisoner to gain intelligence; that he sent him intelligence, from time to time, in which you see how Lutterloh is confirmed by the papers found upon the prisoner, which Lutterloh had supplied him with, as well as by those found in Lutterloh's garden. A great deal of pains has been taken to make you believe that Lutterloh is a man who deserves no credit. An examination has been gone into, in a way very highly improper; because, when the character of a witness is attempted to be impeached, it can only be done by enquiring into the general character the man bears in the world: you have not one witness produced to say, that Lutterloh is a man of such character that he does not deserve credit upon his oath. I protest I never heard a witness go through a long examination with more openness and fairness than he did; for, though he was obliged, when pressed by my learned friend, to answer questions which must be very grat-

ing and painful to him to answer, when he was forced to give an account of himself, as having fallen from a condition very much above what he was afterwards reduced to; that he had fallen into that low condition; that, having been the nephew of a person who was agent (he calls him ambassador) from the duke of Brunswick, he was at last reduced to the situation of a common footman: and yet you do not find him endeavouring to sink these circumstances of his life, which it must be painful for him to relate; but he fairly and openly tells them to you.

Mr. Lutterloh, you are told, is a monster, is a traitor; in short, no words occur to my learned friend, that are bitter enough to be used against him. If this be true, he has, I hope, made some recompense to this injured country for his crimes, by doing that which is the utmost and the best that can be expected from a man who embarks in such work: he has endeavoured to bring to justice the principal offender, by relating that which, I am persuaded, you will believe to be the truth. But, if he is a traitor, a monster; if no terms of reproach are strong enough to delineate his demerits, baseness, and wickedness; what is the prisoner? what led this gentleman, descended from noble parents, born to a great patrimony, an officer in a regiment of France—what led him to seek, for his intimate, for his confidant, this, one of the worst and wickedest of men? How can you account for it, but that there was that unfortunate bond of union between them, which ever is, and must be the case, of men engaging in work so disgraceful, so wicked, so dangerous to themselves, as that in which both these men had embarked? Lutterloh told you that his distress had driven him to what he had undertaken. The same distress, I have no doubt, urged the prisoner to engage in the same business: he has indeed received 3,000*l.* within these two years from France: Lutterloh tells you he has received large sums from him: the letters produced mention, from time to time, money sent by De la Motte to Lutterloh: a note of hand is proved to the amount of 120*l.* which De la Motte had given to Lutterloh; and how can you account for Lutterloh, late a footman, then keeping a little shop, then freed by an insolvent act, and prepared by the deepest distress and despair for any business by which money was to be got—how can you account for his being elevated from that state of indigence, to which he was forced to confess he was reduced, but by his receiving money from some person, for work which deserved an ample reward, and without which no man would submit to any thing which his conscience must so strongly condemn? Is there a conjecture of any other hand that supplied Lutterloh with money, which converted him, from a servant and a beggar, to a country gentleman in Hampshire, except as far as he was supported, and from time to time paid by the prisoner?

If there be a circumstance in the case from whence you can account for the change in Lutterloh's condition, except by the money with which De la Motte supplied him, it has escaped my attention; and if there be no other, then that very circumstance furnishes the strongest conclusion against the prisoner, and confirms, I might almost say, to demonstration, the evidence given by Lutterloh.

I say nothing to you now of the miserable attempts that were made to asperse and blacken the character of Lutterloh, by supposing that Mr. Wildman had detected him in a crime, and that another man would contradict him, and prove him to have said what he had denied; because Mr. Wildman has cleared him, beyond all doubt, from all suspicion, and has utterly disproved that foolish reproach, that was groundlessly adduced, and attempted to be thrown upon him.

As to the other, you are told that Lutterloh, forsooth, had become a witness against De la Motte from the hope of gain; that he had said De la Motte was rich, and he should have a good slice out of him, by convicting him of high treason: that is a strange way to get money from a man. But it did not immediately occur to me how this officer of France, reduced to beggary, and becoming a dealer in prints, Birmingham goods, and toys, should become a rich man, from whom Lutterloh was to get a slice. But it is wasting your time to make such remarks.

Besides aspersing the character of Lutterloh, and attempting to destroy his credit, he is held forth to you as one of the strangest men in the world; to which I have only to ask you, Did you ever in your life hear a story more perfectly strange and incredible, than the description given you by the counsel of M. De la Motte? I have heard of men having been driven by their distresses from this country, and going to live in France, on account of the cheapness of the country; but I never before heard of a baron, an officer of a regiment in France, coming here because he could not support himself in France; and I never heard of a baron coming to England to deal in prints. The whole of that is so extremely ridiculous, that if you read it in a romance you would laugh at it, as being too absurd for that species of composition. That is hardly worth a remark, but for this observation, that you will see one contains charts of America, which cost ten guineas, the other is charts describing the shores of the Atlantic ocean, both of America and Europe. I leave you to guess why De la Motte, employed as he is proved to have been, was so expensive in obtaining these charts.

Unless something has been said to destroy utterly the credit of Lutterloh, you see he has precisely and positively proved the charge against the prisoner. It is proved also by Jellous, who finds the papers upon him; it is proved by the papers that are found in the garden of Mr. Lutterloh. All

the witnesses amount to about four or five; for the witnesses that prove the hand-writing are all to be taken together. But when I am speaking of the confirmation of Lutterloh, I must remark, that, when you are trying men for high treason, whose designs must necessarily be obscured and disguised with the utmost darkness that the perpetrators of them can involve them in, you can't expect witnesses to be produced, who can actually give an account of such design, and who are themselves men of undoubted fair reputation, and of honourable lives; because such men do not embark in these designs: no other men, therefore, can be privy to or conscious of them, no other men can relate them, but those who are prevailed upon by their necessities to bear a part in them: and from the beginning of the world to this time there never has been a treason of moment brought to light and punished, without some of those who had joined in it being afterwards prevailed upon to disclose it. But this is not the case of a witness whose credit is impeached in any other respect, nor is it of a witness standing unconfirmed; for he is confirmed by various papers, about the proof and the effect of which it is impossible to doubt.

You have in evidence two letters; the one produced by Mr. Todd, the other by sir Stanyer Porten. My learned friend commented upon one of them, because it did not come from the Post-office. If it did not, it is not material. Sir Stanyer Porten says it came from the Post-office. Mr. Todd did not recollect that he had sent that letter to the Post-office; but the hand-writing of it is proved by three witnesses beyond all doubt. Sir Stanyer Porten says "It was sent to me from the Post-office; I have lost the cover of it; but it was directed to M. M. Grolay, No. 64, Richlieu-street, Paris." Mr. Todd says, "I had directions to send letters, so addressed, to the office of the secretary of state, lord Hillsborough's, in which sir Stanyer Porten was deputy secretary. There were but two so addressed: one I kept myself, and the other I sent accordingly. I cannot swear I sent that particular letter, but I sent another that was so directed." If sir Stanyer Porten received this letter from the Post-office, which is the evidence of Mr. Todd, can there be a doubt but that this letter came from the Post-office? Not that it makes any difference, come how it would. If sir Stanyer Porten had picked it up in the street, it would not less have been evidence, because it is proved to be the letter of the prisoner himself.

Gentlemen, you are to add to this the proof given by Roger and by Ratcliffe. Notwithstanding all the comments upon the witnesses, I may, I think, remark to you, that those witnesses did not speak with any appearances of preparation, or of art, but like men;—at least Mr. Ratcliffe, who was telling you simply the truth, as he recollected it. With respect to Roger, I leave you to judge whether he spoke

any thing more against M. De la Motte than he could possibly avoid. That he was, in his heart, the friend of De la Motte, I think his examination, when he was called up a second time by my learned friend, can leave no doubt. Now, what is the evidence given by Roger?—That Ratcliffe was employed to carry, not prints, not Birmingham toys, but to carry papers, or packets or parcels of papers. Upon what terms? At 20*l.* a trip, with a promise from De la Motte of a gratuity of 100*l.* if he would be diligent and active. Now, if you had not heard the other part of the story, in God's name what must you at once have concluded that these papers contained? To run over again and again from Kent to Boulogne, out of all course of trade, merely to deliver these packets, and bring back an answer; for Ratcliffe swears he never carried any thing but papers, except once, at the time when he saw M. De la Motte: then with the papers there were two boxes, one containing the model of a gun, the other some prints: at no other time did Ratcliffe carry any thing but papers; for which he is paid an enormous price. Then you will remark what De la Motte says to Ratcliffe, when he conversed with him at Roger's house. "With some of the first you were quick enough; with some of the others you have not been so quick; and the same news gets sooner to France by other channels, and therefore it will not be worth while to employ you, unless you make haste." Why would the news getting into France by other hands, in a shorter time, render of no advantage the packets Ratcliffe carries, unless Ratcliffe communicates intelligence? What other construction can be put upon it? I don't wish you to presume or guess a man's life away; but I desire you to determine upon that evidence which, in this case, as well as in all others, carries conviction to your minds. If it stood alone upon that proof, I conceive you could not have a doubt that Ratcliffe was employed by De la Motte to carry the intelligence to France. Then what does Roger say? He tells you he carried these packets to Ratcliffe; that he was paid eight guineas a month, besides his expences, by De la Motte; and in the prints that he bought he had a shilling in a guinea commission; and that when he went upon the coast of Kent, to carry these packets, he never carried any thing else but the papers: so that, for sending papers only down to Kent, this man receives eight guineas a month, besides his expences, and other advantages. Does this leave a doubt in your minds that this was intelligence to the enemy? Why should he pay so extravagant a price to send a few papers? And they were sent to the commissary at Boulogne, directed in the name of a Mr. Smith. I defy any man who hears me to rise up and seriously tell me, that he has a doubt that those papers contained intelligence to the enemies of England. And if that single fact is made out against the prisoner, he stands be-

yond all doubt convicted; for then he has actually sent intelligence; and if it had not reached France, his guilt would be complete in having employed and paid this Ratcliffe to carry it.

Here, gentlemen, let me remark, that all the papers which came from Roger, as well as those that came from Waltrond, seemed to be generally connected with De la Motte; for Roger tells you, that sometimes De la Motte and sometimes Waltrond paid him this eight guineas a month. He was paid but once by De la Motte. Besides, too, De la Motte's conversation connects the whole of the business with himself; for he speaks of the first of the packets: he says, those first sent went early; those afterwards had been slower in their carriage: that, you observe, was owing to Mr. Stewart's sending them to London. Then does not M. De la Motte, by this conversation, connect himself with all that passed before the time that Ratcliffe had an interview with him? Roger tells you, relative to the letters brought to his house for Waltrond, that he sometimes gave them to De la Motte; that De la Motte read them, and some of them he burnt. These letters were directed to Roger, and sent to him; yet he so well understands the business, that Waltrond and De la Motte are the same, that he gives the letters to De la Motte. Are not Waltrond, Roger, Ratcliffe, and De la Motte, by this evidence, undoubtedly joined together in the transaction?

You have heard arguments upon different parts of the case, as if each of them had stood separately: but they are not only each of them, as distinct transactions, clearly proved in the most satisfactory manner, but they add to the weight of each other; and every part of this one story, and one transaction, most strongly supports and corroborates the other. Lutterloh supplying De la Motte with intelligence in 1778, 1779, and 1780, is extremely consistent with the scheme of sending these papers by Ratcliffe. I have no doubt but he employed other instruments, and gained other intelligence, than by the means of Lutterloh. Lutterloh's district was Portsmouth. I have no doubt but that the scheme extended to Plymouth, and every part of the kingdom where any intelligence was to be obtained. You cannot, as wise and reasonable men, form your judgment upon any one part of this transaction, as distinct from the rest; because, undoubtedly, all concur to support one proposition, that the prisoner was employed in a traitorous design to communicate intelligence to the enemy; and which he did communicate by the instruments, and in the particular manner which has been proved.

These are, in general, all the remarks which, at this late hour, I think it at all necessary to trouble you with: but I recollect, my learned friend told you, it must be secret intelligence; that the intelligence sent by the

prisoner was to be found in every newspaper; and therefore it is not secret, and is not treason. I own the term 'secret intelligence' has never before occurred to me in the description of this sort of high treason; and there is one good reason why it never has, because no mortal can ever understand what is meant by secret. That this was intelligence which no newspaper could supply, there can be no doubt, because this is authentic, it is accurate: part of it, as Lutterloh tells you, was obtained of a man in an office at Portsmouth, whom he found means to corrupt; and there is a wide difference between reading it among common articles in a newspaper, if it could have got there, and having it by a trusty hand conveyed as actual intelligence received from the very port where those ships were preparing. Whether it was conceived to be valuable intelligence, or not, the price paid, of 20*l.* a trip to Boulogne, will satisfy you; as well as the price paid to Lutterloh and Roger: that proves it was considered by them as valuable. And sorry I am to say, that one unfortunate fact has occurred, that the secret signals which should be known only to the officers of a fleet at sea, have, either by De la Motte or some other, been communicated to France. I do not say that is proved upon De la Motte: I only say that such a thing has happened; and it is obvious that such intelligence must be extremely important to the enemies of this country, and infinitely detrimental to us.

With these remarks I shall conclude; not wishing that you should carry the evidence the least beyond its plain and necessary import. Whatever my reasonings upon it have been, or whatever my opinions may be, they are to weigh no farther with you than as your judgment accompanies mine. I have not a wish to convict M. De la Motte as M. De la Motte, or as a man standing at that bar accused of the crime of high treason: as far as I know any thing of the man, considered distinctly from the proof adduced against him, I should hear his acquittal with as much ease, and as perfectly free from dissatisfaction, as any man that sits round me: and, if in your judgment he is not proved guilty of the facts upon which I have been reasoning, in God's name pronounce that he is not guilty. You will do justice, and you will do no more than justice. But, on the other hand, if your judgments accompany mine; if the prisoner is, in your opinion, proved to have been guilty, I will not say of one, but of repeated acts of treason; if you are satisfied of that, upon the evidence you have heard, and are as well satisfied as you can ever expect to be in accusations of such a nature as the present; then, I own, I am not among the number of those who feel that which is falsely, and by a very unjust name, called compassion; for that sort of pity, or tenderness, which shall prevail upon a jury to acquit a man proved to have committed such dangerous treason

against this kingdom as the prisoner at the bar has, if the proof be such as I have supposed it to be; though the jury may have no criminal intention, they are, in truth, the most cruel enemies to their country; for such acquittals tend to encourage crimes like those which are charged upon the prisoner, to lay open to our many enemies around us all the secret councils that are taken, and the preparations that are made to defend ourselves against their attacks; and they tend, of course, to weaken, to disarm, and to destroy your country.

Mr. Justice Buller:

Gentlemen of the Jury; The prisoner at the bar, Francis Henry De la Motte, stands indicted for high treason; and the treason which is specified in the indictment is of two sorts: first, compassing the death of the king; and, secondly, adhering to the king's enemies. The compassing the death of the king is the act of treason; and the overt acts which are laid in the indictment (the evidence of which I shall state to you presently) are only the means which are made use of to effectuate the intentions and the imaginations of the heart. In this way the crime of treason has been defined by our ancestors, and has been settled for ages past. The overt acts, of which evidence has been given to you, consist of collecting intelligence for the purpose of supplying the enemy with it, of sending intelligence to the enemy, and of hiring persons for the purpose of collecting that intelligence in this kingdom. The sending intelligence, or collecting intelligence, for the purpose of sending it to an enemy, to enable them to annoy us or to defend themselves, though it be never delivered to the enemy; or the hiring a person for that purpose, is an overt act of both the species of treason which I am stating to you from this indictment.

Gentlemen, having now stated to you what is the law, I will state to you the question which you are to consider. You are to consider whether the prisoner at the bar collected intelligence of the nature which you have heard, for the purpose of furnishing the enemy with it; whether he did hire Ratcliffe, or Lutterloh, or either of them, to convey this intelligence to the French; and whether the two letters which are proved to have been written by him, and sent to the post-office, directed to M. Grolay, were written and sent to the post-office in order to be delivered to the enemy, and with intent to convey such intelligence to them: for in either of those cases, though the advice was intercepted, and no intelligence actually got to the hands of the enemy at all, yet the offence against the prisoner is proved, and it will be incumbent upon you to find him guilty.

Having now stated to you the law, and the questions for your consideration; I will state to you as fully as I can all the evidence that

has been given, both for and against the prisoner; and, as I go through that evidence, I shall make such observations to you as occur to my mind; because I hold it to be the indispensable duty of the Court, to assist, and not to mislead or confound a jury in their enquiry. But, before I make any observation to you upon the evidence, I must tell you, that you ought not to adopt any one observation that falls from me because it is mine: you are to exercise your own judgments upon the subject; and, if you don't agree with me in the observations which you hear from me, reject them all, and form your own opinions entirely upon the evidence.

[His lordship now summed up the evidence for the crown, and then proceeded thus:]

Now, gentlemen, this is the evidence on the part of the prosecution; and it will be necessary for you to see, that some one of the acts charged upon him is proved by two witnesses; or otherwise, that two distinct acts are proved, each of them by one witness: for, if two acts are proved, one by one witness, and another by another, that is as much as the law requires.

The most material witness, and the man who has given you the longest and the most particular account of the conduct of the prisoner, is Lutterloh; and his credit has been attacked a good deal by argument; and some witnesses have been called to induce you to believe that he ought not to receive any credit at your hands. What credit he may or may not deserve, is for you alone to decide: but, in deciding that, you must consider all the evidence that has been given by other persons respecting the facts which he has sworn to; and judge, upon the whole, whether the account given by him is so substantiated that you will give credit to it. He has given you a very long account of himself: he does not seem to have kept back any thing respecting his own condition, even in times of his greatest distress; and the witnesses that have been called against him, don't go so far as to say that they think he ought not to be believed.

For the prosecution they have produced the letters, which are proved by other witnesses, as well as by him; to be the hand-writing of the prisoner; which letters speak of the transactions that Lutterloh has given an account of; and if the account given by him be confirmed by a letter under the prisoner's hand proved by another witness, though by nothing else, that will give him a degree of credit, and will also be sufficient to satisfy the requisition of the law, which says there must be two witnesses to prove a charge of treason. Many of the letters were found secreted in Lutterloh's garden; they were buried in that garden; they were found in consequence of an information given by him; and they are proved to be in the hand-writing of the prisoner. Those letters speak fully

of the purpose for which Lutterloh was employed, what intelligence he was to get, and, when he had got it, what use he was to make of it. The other two letters, which I read to you last, are, upon this part of the case, likewise material, as they tend to confirm the account which Lutterloh has given; because in those letters (which were sent to the post-office by the prisoner, and directed to M. Gro-lay) he gives an account of the state of the ships which then were at Portsmouth, of those which had sailed under sir Samuel Hood, and of the force at that time within this kingdom, and likewise of the force that had been sent to America.

The counsel on the part of the prisoner have first objected, that similitude of hand-writing is no evidence. They certainly are right in that argument; but the objection does not apply to this case. Similitude of hand-writing is where a paper is produced, not sworn to by any body that has ever seen him write, or has any knowledge of his hand; but the inference is made that it is his hand-writing, because it is like some other which is so: but that is not the evidence that has been offered to you respecting any one of the papers which you have heard read: they have all been proved by persons who were acquainted with his hand-writing; every one of them is proved by Lutterloh; all but two by Le Cointe, and all but three by the witness Bauer; each of whom had seen the prisoner write. They speak not from the similitude of the writing only, but from their knowledge of his hand-writing, having seen the prisoner write before; and from that knowledge they say they believe the letters and papers are of his hand-writing. That, gentlemen, is the only evidence which can be given of hand-writing, except it happens that there be a person who saw the prisoner actually write the papers. And this kind of evidence has been received in many cases before: it was so received in the case of Dr. Hensey,* which was mentioned by the counsel; and in many older cases the same rule has prevailed.

There is no such distinction as the counsel for the prisoner attempted to make between that which is legal evidence in a civil action, and in a criminal prosecution: that which is evidence in one, is evidence in the other; and in one of the cases for high treason, where the letters were proved in the same manner that they have been now, the Chief Justice says, it is the common case of proving a man's hand-writing, which is done every day in an action between party and party. You are told, that you ought not to believe that this is the hand-writing of the prisoner, because one of the witnesses, namely Bauer, was not very conversant with his hand-writing; for he had seen him write only twice. That witness said he had seen the prisoner write only twice; but from thence he tells you he is able to form

* Vol. 19, p. 1341.

an opinion of the hand-writing, and that he believes it to be the hand-writing of the prisoner. Upon the question of the hand-writing you have the evidence of three persons, who swear they are acquainted with his hand; and they believe that the several papers which were shewn to them, except two or three, which are not very material, are all of the prisoner's hand-writing. Those three are also proved by Lutterloh to be written by the prisoner; he swears he actually saw the prisoner write many of them. On the other hand, you have not a single witness called, who says he does not believe them to be the hand-writing of the prisoner; and therefore this part of the evidence stands uncontradicted.

His lordship now stated the evidence for the prisoner, and then proceeded thus :

These are the three witnesses called to impeach the credit of Lutterloh. The witness Lappel said he rather doubted whether he would trust or believe him.

The counsel for the defendant did not put the question in the manner the question always is, and ought to be put, if they mean to impeach the veracity of a witness; and every day's experience teaches the gentlemen at the bar how they ought to put the question, if they think the answer will serve their purpose; for the question was never asked of any witness, whether he thought this man from his general character, deserved to be believed upon his oath. The only question at all like that was put to Lappel, with this addition, whether he would trust or believe him. As to the other witnesses, they were never asked the question at all; and Mr. Wildman tells you, during the time Lutterloh was with him, he behaved extremely well; and he clears him from any imputation of being concerned in the misfortune that attended him whilst Lutterloh was with him.

Then, in deciding what credit you will give to the witness Lutterloh, you are likewise to examine all the other facts which have been given in evidence; and the different paper writings, that have been produced under the hand of the prisoner, are all circumstances for you to take into your consideration in the credit that you will give to him; for, if you find that his evidence is confirmed and supported by other evidence, it will be a ground for you to give credit to what he has said. But, whether you will give credit to him or not, is, as I told you before, a matter for your decision. If you give credit to him, and believe that these letters are the hand-writing of the prisoner, there are then two witnesses to prove the act of hiring Lutterloh for the purpose of procuring intelligence to be sent abroad.

There is, distinct from that evidence, the account which you have had from the witness Ratcliffe, supported, as you have heard, in part by Mr. Stewart, with respect to the employment that he had under the prisoner; and

he tells you, that the sums which he received were very considerable, and that he had a settled allowance for every trip which he took. On the part of the prisoner, it is said, that this man was employed only to send wares which the prisoner had bought at different places, prints which were valuable of their sort, and things which he had purchased at Birmingham. If Ratcliffe was employed only to carry such packages and goods, most undoubtedly that does not amount to any proof of his being hired by the prisoner to carry intelligence to the enemy: but you will consider the sums which were allowed to him for the trips which he made, the agreement which is proved as to the regularity and the frequency of his going, and that, at some of the times when packages were sent down to Canterbury, nothing else was sent with them.

Thus stands the evidence as to the hiring of the two persons whose names you have heard, namely, Ratcliffe and Lutterloh: and upon either of these parts of the case, if you should be of opinion they were hired by the prisoner for the purpose of conveying intelligence of the destination of our fleets, or the strength of the army and navy, to the enemy, the overt act is proved, which constitutes that species of treason which the prisoner is charged with.

But, besides that, there are the two letters which I mentioned to you last, and which are proved to be in the hand-writing of the prisoner, and put into the post-office, that they were taken from thence, and that they were directed to Grolay, who lived in Paris. If the case stood upon this evidence only, it would be material for you to weigh the contents of those letters; for, if in those letters he has disclosed the state of the navy or the army of this country to the French, though they never were received, yet, being written by him for that purpose, and put into the post-office, though intercepted, they do amount to an overt act of the two species of treason charged. That was the evidence in the case of Dr. Henssey, and in several other cases before that. It was solemnly decided by all the judges of England in the Case of Gregg,* that, though the letters were intercepted, yet, if they were written by the prisoner for the purpose of conveying intelligence, the crime as to him was complete; for he by that means had done every thing in his power, and the treason was complete on his part, though it had not the effect intended: and therefore, if these two letters do convey intelligence, or were meant to convey intelligence, to the enemy, of the state of the army and the navy of this country, if the case stood upon them alone, the overt act would be proved.

Now, having read these letters to you before, I shall only state to you generally, that one of them mentions at what time different East-India ships are to sail, some of

* Vol. 14, p. 1371.

which had already gone round from Gravesend, and that others were expected to sail within six or eight days; the number of regiments which were destined for the West-Indies; what preparation is making for the convoys, when those convoys are to sail, and where they are to go; the number of effective men which will be in North America and Canada; that another convoy is to sail from Cork; when other Indian ships are expected to return from India, and particularly the number and size of the ships which were stationed off the Isle of Wight: and in that letter he compares the strength of the fleet, as then in England, to what the fleet was at Brest, or what the fleet in England would be when other ships returned here. In the other letter he states that sir Samuel Hood had sailed the Thursday before; he states how many ships of the line he had sailed with; and he states that other vessels, which are going to Gibraltar, are to sail with admiral Hood to a certain latitude. These are the facts which are disclosed by the prisoner in the two letters sent, or directed, to Grolay; and, as I told you just now, upon these two letters, if you are satisfied with the proof that they are the prisoner's hand-writing, and that they were sent or put into the post-office by him for the purpose of conveying such intelligence to the enemy, upon that ground alone you will be obliged to find the prisoner guilty.

With respect to Lutterloh, I forgot, in going through the evidence, to state to you one fact which is very material in itself, and which likewise tends very strongly to confirm his evidence; and that is, the contents of the papers which were found upon the person of the prisoner. Those papers were the hand-writing of Lutterloh himself: the prisoner was not at home the night before he was apprehended: the gentleman who came up from Wickham tells you, that he saw the prisoner at Wickham not above a day or two before the time that he heard that the prisoner was taken up. Then, a day or two after the prisoner was with Lutterloh at Wickham, he is apprehended in London, with papers in his pocket, written by Lutterloh, containing an account of all the ships that were at Portsmouth, or at Spithead, or that had sailed, or were intended to sail soon.

It is for you to lay all this evidence together; and if you are satisfied upon either of the three heads which I have mentioned to you, namely, that the prisoner did hire the two persons Ratcliffe and Lutterloh, or either of them, for the purpose of conveying intelligence to the enemy, that is an overt act of treason; or if you are not satisfied of that, and are satisfied that he did collect intelligence of the nature which you have heard, for the purpose of sending it, that also is a complete overt act of treason; or, in the third place, if you are satisfied that he sent those two letters to the post-office for the same

purpose, that also is another and complete overt act by itself: and in either of these cases you must find the prisoner guilty. On the other hand, if you do not believe that the information of the state of our fleets and armies, and their destinations, was gained by him for the purpose of supplying the enemy with it, and that he had no connexion with Ratcliffe or Lutterloh; or, if he had any connexion with them, yet that it was not for the purpose of sending advice or intelligence to the French, but merely for the purpose of sending goods, as suggested by the counsel, to different places; and that the prisoner did not, by the two letters stopped at the post-office, mean to supply the enemy with such information as might enable them to annoy us, or defend themselves; in that case you will acquit him.

The Trial began at nine o'clock in the morning; at thirty-five minutes after ten at night the Jury withdrew: they returned into court in eight minutes, with a verdict finding the prisoner—Guilty.

SENTENCE.

Mr. Justice *Buller*. Francis Henry De la Motte, the offence of which you stand convicted is so enormous, and the dangerous tendency of it is so obvious to every body who has heard, or who may hereafter read the transactions of this day, that it would be but mis-spending time to enlarge upon it. It is an offence for which every state under the sun has agreed in inflicting the most exemplary punishment.

There is no other nation, no other government under heaven, which would allow to a traitor of your description the same privileges, and the same indulgences, which you have experienced, during the course of your trial, at this bar. You have had a long, a full, and patient trial: you have had the assistance of such of the advocates at the British bar, as you yourself approved: you have had a long previous information of the names of those who were to decide upon your guilt, or innocence; and you have had information, of equal length, of those who were to be adduced as witnesses against you. These are indulgences which are allowed in no country but in England; and you, though a foreigner, though a native of that country which has harboured an old inveterate hatred against this kingdom, and which is now at war with it, have yet received every indulgence which a British subject could enjoy. But, after all this, you have not been able to offer any fair, specious, or credible reason for the conduct which you have pursued. During your residence in this country, as well as during the course of your trial, you have received the protection of the laws of the land. As such, you owed a duty to those laws, and an allegiance to the king whose laws they are;* but

* See *East's Pleas of the Crown*, c. 2, § 4.

you have thought fit to abuse that protection which you received. The law of this country, though slower in its progress, and more cautious in tracing out the unerring path of truth than the laws of most other countries, is not less sure than they are in detecting guilt; and, when guilt of such enormity as yours is detected, the law must take its course. You have, by great and immense bribes, corrupted others to join you, within the very bowels of this country, to become traitors against it, and to endeavour, as much as you could, to ruin the constitution, and to render a land of liberty and of freedom, of justice and of mercy, subject to the most arbitrary sway of its inveterate foe. In such a case therefore as yours, you must expect to receive, from an English court of justice, that punishment which every country would inflict for the same offence. Such efforts as yours have hitherto proved ineffectual, and I trust in God they ever will. But the safety of the state requires that you should be made an example of, to deter others from meriting that fate which awaits you.

The sentence of the law in your case is, and this Court doth adjudge,

‘ That you be drawn upon a hurdle to the place of execution; that you be there hanged by the neck, but not until you are dead; but that, being alive, you be cut down, and your bowels taken out and burnt before your face; that your head be severed from

‘ your body, and your body divided into four parts; and that your head and quarters be disposed of as the king shall think fit: and may the Lord have mercy on your soul!’

“ The prisoner received the awful doom with great composure, but inveighed against Mr. Lutterloh in warm terms.

“ It is said that in the last war, he was colonel of the regiment of Soubise, and behaved on several occasions with gallantry. Upon the conclusion of the war his regiment was broke; soon after which the title of baron Deckham [qu. d’Akerman], with an hereditary estate, devolved to him. Having lived beyond the limits of his fortune, he retired to England some few years since, where he has continued to reside till the commission of that act which he is to expiate by the forfeit of his life.

“ His behaviour throughout the whole of this trying scene exhibited a combination of manliness, steadiness, and presence of mind. He appeared at the same time polite, condescending, and unaffected, and, we presume, could never have stood so firm and collected, at so awful a moment, if, while he felt himself justly convicted as a traitor to the state which gave him protection, he had not, however mistakenly, felt a conscious innocence within his own breast, that he had devoted his life to the service of his country.”

Annual Register, 1781, p. 185.

565. The Trial* of DAVID TYRIE, for High Treason, at the Assizes at Winchester, held by Adjournment on Saturday, August the 10th; Before the Hon. John Heath, esq. one of the Justices of his Majesty's Court of Common-Pleas: 22 GEORGE III. A. D. 1782.

DAVID TYRIE was indicted for falsely, wickedly, and traitorously, (being a subject of Great Britain) compassing, imagining, and intending, the king of and from the royal state, crown, title, power, and government of Great Britain, to depose and wholly deprive; and the king to kill, and bring and put to death; and to fulfil, perfect, and bring to effect, his treason, compassings, and imaginations, as such false traitor, falsely, wickedly, and traitorously composing and writing, and causing to be composed and wrote, divers letters and instructions in writing, to shew and inform Lewis the French king, (who for a long time, and still carries on and prosecutes, by land and by sea, an open and public war against our present king) and his subjects, enemies of our king, of the stations of divers

squadrons of ships of war of our king, employed in prosecuting and carrying on said war; and also of the service in which divers other ships of war of our king were then employed in prosecuting and carrying on said war; and also of the times of sailing of divers ships of war of our king, and the destination of said ships, and the services in which such ships were employed; and of the times when other ships of war of our king were then expected to sail from this kingdom, and the voyages, cruises, and services, upon which such ships were expected to sail; and also of the times when other ships of war of our king, employed in the prosecution and carrying on of said war, were expected to arrive in this kingdom; and also the number and force of divers ships of war of our king, within certain ports of this kingdom, and of the state and condition of several of said ships;

* Taken in Short-hand by Joseph Garney.

and also of the times of sailing of divers other ships and vessels of our king, from this kingdom, to the dominions of our king, and other places, in parts beyond the seas; and during said war, as such false traitor, in prosecution of his treason and treasonable purposes, falsely, wickedly, and traitorously composing and writing, and causing and procuring to be composed and wrote, a letter to be sent to subjects of said French king, in parts beyond the seas, enemies of our king; in which said letter said David Tyrie (among other things) wickedly, falsely, and traitorously notified, disclosed, and revealed, to said enemies of our king, that a squadron of ships of war of our king, consisting of the *Arethusa*, *La Prudente*, *Monsieur*, and *Recovery*, frigates, had sailed from Spithead, on second of February, (meaning second of February last) and were then employed in prosecuting and carrying on said war off Cape La Hogue in France: and in another of said accounts or lists, said David Tyrie falsely, wickedly, and traitorously, notified, disclosed, and revealed, to said enemies of our king, the times of the sailing and destination of divers other ships of war of our king, which had lately before that time sailed from this kingdom for the purpose of convoying the East and West India fleets, and other ships belonging to subjects of our king; and also the stations of divers ships of war of our king, then cruising on the French coast, against the enemies of our king: and in another of said accounts or lists, said David Tyrie falsely, wickedly, and traitorously, notified, disclosed, and revealed, to said enemies of our king, the number, state, condition, and force, of divers other ships of war of our king, employed in prosecuting and carrying on said war, and the times when such ships were expected to sail from this kingdom, and the voyages, cruises, and services, upon which such ships were expected to sail; and also the times when divers other ships of war of our king, employed in prosecuting and carrying on said war, were expected to arrive in this kingdom; and also the number and force of the ships of war of our king then repairing in ports within this kingdom: and during said war, said David Tyrie, as such false traitor, in prosecution of his treason and treasonable purposes, falsely, wickedly, and traitorously, composed and wrote, and caused and procured to be composed and wrote, an account or state, to be sent to subjects of said French king; in which said account or state, said David Tyrie notified, disclosed, and revealed, to said enemies of our king, the number, and time of sailing, of ships or vessels of our king, employed as transports, store ships, and victuallers, for the purpose of prosecuting and carrying on said war; and during said war, said David Tyrie, as such false traitor, in prosecution of his treason and treasonable purposes, falsely, maliciously, wickedly, and traitorously, composed and wrote, and caused and procured to be composed and wrote, ano-

ther letter, to be sent to subjects of said French king, in parts beyond the seas, enemies of our king, in which last-mentioned letter said David Tyrie (amongst other things) falsely, wickedly, and traitorously, notified, disclosed, and revealed, to said enemies of our king, the number, and times of sailing, of certain ships or vessels belonging to subjects of our king, from this kingdom to the dominions of our king and other places in parts beyond the seas: and said David Tyrie, in prosecution of, and to promote his treason, imaginations, and compassings aforesaid, falsely, wickedly, and traitorously, did send, and procure to be sent, all and singular said several letters, instructions in writing, accounts, lists, and states, to be delivered in parts beyond the seas, to several subjects of said French king, enemies of our king,* and that during said war, said David Tyrie, as such false traitor, and in prosecution of his said treason and treasonable purposes, falsely, wickedly, and traitorously, did retain, hire, and procure, and cause to be retained, hired, and procured, William James, to carry and convey from this kingdom unto the kingdom of France, and there to deliver to subjects of said French king, enemies of our king, certain letters, instructions in writing, to inform said French king and his subjects, enemies of our king, of the state, condition, destination, and stations, of the naval forces of the kingdom, and other advice and intelligence, to enable and assist said French king, and his subjects, in the prosecution and carrying on of said war against our king and his subjects — against his duty, and allegiance, &c. and against the statute, at Gosport, 16th of February last, and on other days and times, as well before as after.

Second Count. For unlawfully and traitorously adhering to the king's enemies.

The Prisoner having pleaded Not Guilty to the indictment, the pannel was called over by the Clerk of Arraignment; when the Prisoner's Counsel having peremptorily challenged thirty-five of the Jurors, and the Counsel for the Crown three, the following were sworn.

Richard Dicker,	John Wade,
William Knowles,	Richard Moody,
James Butterworth,	Thomas Figes,
Thomas Wilsted,	William Grist,
John Godsall,	William Edney,
John Tidcomb,	John Atkins.

Counsel for the Crown.—Mr. Morris, Mr. Serj. Grose, Mr. Batt.

Counsel for the Prisoner.—Mr. Watson.

* That the writing and sending such letters, &c. with such an intent, although the letters, &c. were intercepted, and did not reach their destination, are overt acts of compassing and imagining the death of the king, and also of adhering to the king's enemies, see *Gregg's Case*, vol. 14, p. 1371; *Hensley's Case*, vol. 19, p. 1341; *De la Motte's Case*, vol. 21, p. 687; and *East's Pleas of the Crown*, ch. 2, s. 58.

EVIDENCE FOR THE CROWN.

Maria Hervey sworn.Examined by Mr. Serjeant *Grose*.*

Where do you live?—In Carvick's-row, Scotland yard.

I believe you keep a school?—I do.

Do you remember any lady, at any time, coming to you with some papers?—Yes; on Wednesday, the 18th of February.

Who was she?—A woman who called herself Askew.

What did you do with those papers?—I inspected into them, and then delivered them up to a gentleman of Westminster, Mr. Page.

How came you to inspect into them?—From various reasons. The lady gave me reason, from what she said, to suspect their being of a criminal nature.

What were those reasons?—By her saying 'she had taken three coaches to bring them;' and she appeared very much flurried. She said, 'the gentleman that delivered them to her was in trouble, and wished to get them off.' This created a suspicion in me. I therefore inspected into them; and gave them all, on the same day, to Mr. Page.

Cross-examined by Mr. *Watson*.

Had you any acquaintance with Mrs. Askew?—Very little: I had seen her four or five different times before.

Of what nature was your acquaintance with her?—Her sister sent a couple of young ladies to school to me, for education. I had seen Mrs. Askew at Mrs. Smith's lodgings.

Do you know where Mrs. Askew lived?—No; not when first I became to have some knowledge of her.

Did she give any other reason but this for intrusting the papers to you?—No. She before had told me she had something to intrust with me, and wanted a favourable opportunity.

How long was that before?—About a month or six weeks. And she asked me which was the most eligible time of seeing me alone. I told her my hours of leisure.

And she came at that distance of time afterwards?—Yes.

Do you recollect pretty perfectly what she said?—"Mrs. Hervey, I have something to communicate to you, and wish to find an opportunity of telling you." When she came with the papers, she said, she would take it as a favour if I would take particular care of these papers; and she hoped I would not shew them to any person. I said, No, certainly I shall not shew them; I would not shew my own papers, that were of a family nature; and certainly should not shew them.

Had she explained to you that these were papers of a family nature?—No; but I thought they were so.

Had not she told you they were some con-

cerns her husband did not know of? No; she told me no such thing.

Recollect accurately that part of the conversation?—She said no such thing. The man, she said, had given them to her; 'he,' she said. I said, What, Mr. Tyrie? She said, Yes. She said, if Mr. Tyrie was here, he would be very angry with you for calling me Askew, for he took me to church for a name.

Did she not tell you she was afraid he should know of these papers?—No; she said no such thing.

You said she expressed considerable anxiety?—Yes; and was very much flurried.

And said, if Mr. Tyrie knew of your calling her Mrs. Askew, he would be very angry?—Yes; but I said she had never passed by any other name in my hearing.

She said she was in trouble, and wished to get rid of the papers?—No; she said he was in trouble.

Recollect whether you did not understand from her, at that time, that Mr. Tyrie did not know any thing about these papers?—I had every reason in the world to think he did.

What are those reasons?—Her saying 'he,' immediately upon my mentioning Mr. Tyrie's name: and from having seen Mr. Tyrie; and from knowing that she lived with Mr. Tyrie.

Court. What did you say about what passed upon your mentioning Mr. Tyrie's name?—

A. She said, Yes. She said they came from he. I wished to know whether it was he. I had seen them together at her sister's house. I said, What, Mr. Tyrie? She said, Yes.

Mr. *Watson*. Upon her saying 'he' would be angry, you asked who 'he' was; what, Mr. Tyrie?—A. Yes.

But she did not say the papers came from him?—No; she did not.

Mr. Serjeant *Grose*. When she said 'he,' and you said, What, Mr. Tyrie? how came the name of Mr. Tyrie to occur to you?—A. Because I had frequently heard her sister mention the name of Tyrie, and her sister's children had mentioned it in my school. I had heard her sister mention the name frequently.

You said just now she said Mr. Tyrie would be angry?—She never mentioned such a word as his anger when I asked if Mr. Tyrie gave her the papers; then she made no answer.

What did she say about his anger, on account of your calling her Askew?—She said, "If you was to call me Askew in his presence, he would be angry." When she gave the papers, she said he had delivered them to her to get them off. These were the very words. I thought it astonishing she should take three coaches, to bring papers. I asked her what that meant: for she said she took three different coaches, in this manner: that she stopped about ten minutes, and then took another; for that he was in a great deal of trouble, that he wished to get them off safe, and that she had taken that method.

What did you say next after that?—I do

* Afterwards one of the Justices B. R.

not recollect that I made any reply to it. I had my own sentiments upon it. I thought there was something very bad. When I said, what, Mr. Tyrie? she was then silent. It was exceeding cold. She had a large Brunswick great coat on. I said, Madam, you have a good covering against the inclemency of the weather; for it is very severe. She said, she had great occasion for it; for she travelled night and day. I said, Travel night and day! you told me you lived at Ranelagh: that is not a great way. She replied, O dear! I have come five hundred miles.

You said before, that she said he was in a great deal of trouble, and wished to get them off safe?

Court. What that woman said is not evidence.

Mr. Serj. Grose. Did I understand you right, that you had seen this lady and Mr. Tyrie together?—*A.* Yes; I had seen them twice together.

Is the prisoner that person?—He is.

Mr. Watson. You seem to have mended your evidence in this last account of it; for the account you gave to me was, you called her Mrs. Askew: upon which she said, if he heard you call me Mrs. Askew, he would be angry. That was a part of your evidence, and the point to which you applied in answering my questions to the word 'he.' Now, in your answer to this gentleman, you said the word 'he' related to the prisoner, when she gave you the papers; that 'he' was in trouble, and sent them. You said otherwise to me. Which is the truth?—*A.* She did not say she brought them from Mr. Tyrie. She said 'he.'

Court. Had you been talking of Mr. Tyrie before?—*A.* No.

Mr. Jonathan Page sworn.

Examined by *Mr. Batt.*

Are you acquainted with the last witness?—I am.

Do you remember her, at any time, shewing you a bundle of papers?—Yes.

On what day was it?—In the evening of the 13th of February last. She brought the papers to me late in the evening. She did not tell me the nature of them at the time, but she desired I would look at them. I said, as soon as I was at leisure, I would examine them. It was rather late before I was disengaged. Then I looked them over, and saw the nature of them. I returned them to her, and told her I would consider, against next morning, what was proper to be done. I got up early next morning; and went, with a constable, to her house. I took the papers from her, and left the constable there, with a charge to seize any person who should come to enquire for the papers. I examined the papers fully, marked them, and then sent them to a gentleman at that time in the ministry, the secretary at war. He returned them in a short time by his servant, with a note: in consequence of which I went to the Admi-

nistrality with these papers, and saw Mr. Stephens. After that, we went to the office of the secretary of state; and there were two or three meetings upon these papers, and the examining of them. The papers were delivered at the secretary of state's office, to Mr. Fraser, or Mr. Chamberlayne.

Look at these papers, and see whether the marks upon them are, or are not, of your making?—They are.

And they were marked by you at the second time they were put into your hands?—They were. They are from No. 1, to No. 50 I believe.

Mr. John Vowell sworn.

Examined by *Mr. Serjeant Grose.*

Have you ever seen the prisoner write?—I have.

Do you know his hand writing?—I do.

Pick out such of those papers as you know to be his hand-writing. Please first to inspect No. 1 to No. 8, which are intitled "Progress of the Navy."—These papers, No. 1 to 8 appear to be his hand-writing.

Mr. John Palmer sworn.

Examined by *Mr. Serjeant Grose.*

Did you ever see Mr. Tyrie write?—I have.

Do you know his hand-writing?—I do.

Look at these papers, from No. 1 to 8?—I believe these to be his hand-writing.

Thomas Flint sworn.

Examined by *Mr. Batt.*

I believe you have an employment in the Navy-office?—Yes, I have.

In what particular branch?—In the surveyor's office.

Look at these papers (No. 1 to 8), are they similar to papers you have in your office so intitled?—I have here a book which contains the progress of the navy for the whole year.

Where is that book kept?—It is kept in the office.

Does this account appear to be a copy of that book?—It appears to be an exact copy.

What is the date of the list you are looking at?—The 23d of November, 1781.

Now cast your eye over them, and inform the court and jury, whether you find it correspond, or find any difference: if you find any difference, say what that difference is.—I have compared it with what is done in his majesty's yard at Deptford; it exactly corresponds: and in the merchants' yard, where ships are building. At Woolwich, there are two armed store-ships in my book, which are not in this; but these are things of no manner of consequence.

Mr. Morris. I see there are three ships at Deptford less, in this account, than in your's; they are trifling things: one is the Hound sloop, only 14 guns, a cutter, and a yacht.

In that list which has been proved to be of the prisoner's hand-writing, there are the names of the captains, together with some

characters. Are those, or not, contained in your book?—They are not; the names of captains are never contained in this.

How often are these lists made out, and sent to the Navy-office?—Every week.

And then you make them out in such a book as you have now before you, from the respective lists sent from the different yards?—Yes.

Is that a report of one week from the different yards, or of how long time?—This I have spoken to is of one week only.

Look at the paper No. 2.—That is without date.

Is it such a paper as the other you have spoken to?—No. There are more ships in this account than we have in the original book of the 23d of November, 1781, if it means that day.

Cross-examined by Mr. Watson.

You say that list of ships resembles the list you have, only with small variations?—It does.

But is it a copy of your account? Does it contain the observations, for instance, which your's contains?—Nearly; and I dare say was to answer the same purpose. It is the progress of the navy; and this is a list of the same ships that I mentioned: there are one or two small ships indeed different. I did not look farther than Deptford, the merchant's yards, and Woolwich.

Mr. Watson. I meant, whether it contained your official observations.

Mr. Batt. What is the title of the book?—A. "An account of the readiness for the sea of his majesty's ships and vessels under repair, and of those building and rebuilding, and of such as lie in harbour." The book contains more than the title imports; for here are all the ships that are building for his majesty in the merchants' yards, which is not mentioned in the title.

Does the title of that paper you have looked at correspond with the title of your book?—The words are the very same.

(Several of the entries were read.)

N° XI.—(Proved to be the prisoner's hand-writing). It contained a rough draught of a list of ships, with their condition, at the merchants' yards, at Portsmouth, Plymouth, Woolwich, Sheerness, and Harwich.

N° XIV. and XV.—(The prisoner's hand-writing). They contained a list of the navy of Great Britain, in numerical order, to No. 221 ships, from the Britannia of 100 guns, down to the Seaford, with the number of guns they carry.

N° XVIII.—A list of ships, not in the prisoner's hand-writing; but a remark against one of them in the prisoner's hand-writing, in which he says, "Going to Mahon or Africa, to be met by the convey with troops."

N° XIX.—(The prisoner's hand-writing). It contained a list of the particulars of a great number of ships. At the bottom, "4th Jan. to Mr. Bonnier. 8th Jan. to Mr. Brodelet."

At the bottom of the paper, in another hand, were written these directions:

"For Ostend. A Monsieur De Neve, à l'Hôtel de Ville, pour Mr. Dominique Le Moine, à Ostend."

"A Monsieur Bonnier, chez Mr. Dufour, Sellier, Rue de la Cue, à Boulogne."

"Mons. Brodelet, Rue St. François au Marais, à Paris."

N° XXI.—Another direction to Mons. Bonnier, upon a separate piece of paper.

N° XXII.—(The prisoner's hand-writing) contained a list of ships at Spithead on Thursday evening, Jan. 24th, mentioning those which were coming into harbour.

N° XXVI. and XXVII.—(The prisoner's hand-writing.)

"In affairs that regard the navy of England, the information that I conceive necessary for the regulation of your friend, may be had in a summary way from the Admiralty-office; but the particulars that you require must come from the different departments for naval affairs.

"1st. A correct list of the line-of-battle ships in ordinary, with their state and condition; together with the frigates, sloops, and fire-ships. This may be got from the Navy-office.

"2d. Ditto of all ships of war, of every denomination, building in the king's and private dock-yards; with the contracted time for their launch. This may also be got from N. O.

"3d. Ditto of the line-of-battle ships in commission; their numbers of guns, and weight of metal; station; warlike and ship's stores; number and quality of the crew actually on board; state and condition of the ship; with her sea and serviceable qualities.

"It is possible to get all those particulars from the N. O. but the most certain mode would be from the Admiralty, Navy, Ordnance, and Victualling-offices, and the respective dock-yards where vessels rendezvous for cleaning and repairing.

"Provisions are transported from the Victualling-office in London to the different ports where vessels of war fit out, where they are committed to the care of the store-keeper, who victuals the outward-bound ships by orders from the Admiralty. The same mode is observed with ordnance and naval stores. Official lists in general are inaccurate, and the state of our navy from them cannot be depended upon; a communication with an intelligent person at each of the dock-yards is the best channel for procuring and keeping an exact state of the navy.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
" I estimate the first expence in settling the correspondence from London to Plymouth and back, by way of Portsmouth, 450 miles, which with road expences, posting costs 1s. 1d. per mile - - -	94	7	6
Suppose expences while at the docks - - - - -	8	8	0
To Chatham and Sheerness and back, 90 miles, at 1s. 1d. - -	4	17	6
Suppose expences while at the docks - - - - -	6	6	0
A correspondence may be settled at Harwich without the expence of a journey - - -	0	0	0
	<hr/> £. 43 19 0 <hr/>		

" I should imagine that proper persons could be found at Portsmouth and Plymouth, for five guineas per month, including all extra expences, to furnish every information wanted; and one person, on the same terms, to supply for both Chatham and Sheerness, as the communication between them is frequent, and the distance but small.

" Harwich being a more inconsiderable dock, two or three guineas per month would be sufficient.

" Woolwich and Deptford, being at a short distance from town, may be furnished by the agent there.

" By the above, I mean regularly to have a packet from each twice a week. Except in matters of great importance, where it might be necessary to send an express; and it is expected, that the agent will be reimbursed his actual expence on such occasions, over and above the stated allowance.

" If it is required to know weekly the quantities of stores and provisions contracted for by the Victualling-office for the use of the fleet, a person in that office is necessary, but not otherways; and such information may be had for about three or four guineas per month.

" A communication with a person in the Navy-office is very necessary; and every information wanted from that quarter may be had for seven guineas and a half per month.

" A communication with the Admiralty is also necessary; but, as that is for information only, no sum can be stipulated, but must depend on the importance of the occasion, and condition of the officer.

" A communication with the Ordnance-office, I think, unnecessary, unless it be to know the quantities on hand, and what are shipped off from time to time, which can always be known for a small expence."

(All the papers throughout the trial, stated to be the prisoner's hand-writing, were proved so to be by Mr. John Vowell and Mr. John Palmer.)

William James sworn.

Examined by Mr. Batt.

Where do you live?—I formerly was resident at Lyme.

Where did you live in February last?—At Portsmouth and Gosport. I have a brother there.

Look at the prisoner: are you acquainted with him?—I know the prisoner.

Did you see him any time last February?—Yes, at Gosport. I am rather thick of hearing: I will rehearse the whole story if you please; afterwards, if you ask me any questions, I will endeavour to answer them to the best of my knowledge. I was acquainted with one captain Bowles; he told me he was employed by Mr. Tyrie to go to Ostend.

I must bring you to the time I mentioned in February. Drop the other circumstances of your story, and inform the Court what passed between the prisoner and you in February.—I met Mr. Tyrie pretty near the beach at Gosport: he asked me, If I had heard any thing of the misfortune that had happened to Bowles, who was employed in captain Harrison's vessel to go to Ostend. He said, Captain Bowles had the misfortune to lose the vessel coming out of Boulogne. Mr. Tyrie said, He wanted to supply some ships going out to the East Indies with wine. He said, He wanted to get the wine home, and asked me if I would go and conduct a vessel home from Boulogne. I said, my business required me to go to Guernsey. He said, He should give me 15*l.* or 15 guineas, if I would go and bring home the wine to Spithead, and the people that were there; and that I should have a letter of credit for 50*l.* if I chose to purchase any thing. I asked him what vessel he had to carry me there? He said, He would have a vessel at a moment's notice; he could have one of Stevens's at the Point. I went with him there. Stevens was indifferent about going. I told Mr. Tyrie the wind was too short to go to Boulogne. He then said, If I could not get there, Cherbourg would answer his purpose as well as Boulogne. I told him I had been there many times, but could never buy any wine; but he said, the gentleman he should send me to would supply me with what he wanted. I told him, it being war-time, it would be hazardous to go into an enemy's country; I thought they might detain me there. He said, No, he would give me a piece of paper of signals, which I was to make at my arrival there, that nobody should detain me. I asked him if I should have my liberty to go on shore? He said, I might; but none of the people on board must go on shore: that I should be provided with necessaries.

Did he give you any signals?—He did; but, before I had the signals, I waited upon him at the Crown-inn; there he delivered me a packet.

At what time was this?—Between nine and ten o'clock at night of the same day; I think it was the 17th of February; it was of a Sunday.

Are you sure it was on a Sunday?—Yes; and I believe it was on the 17th; Mr. Tyrie delivered me a packet.

When you went to Tyrie's lodgings at the Crown, who was with him?—Mr. Mailstone, and Mr. Tyrie's wife, or a woman that passed for his wife, was with him.

Did you observe what they were doing?—Mr. Tyrie and his wife were both sitting at the table, and I believe they were both writing; but I did not interfere with their business, as I looked upon it to be letters of trade. Mr. Tyrie, after that, gave me a packet of letters.

Look at that packet.—This is the same, I believe; I am sure the outside is. It was between nine and ten o'clock when he delivered me this. Mr. Tyrie and his wife then set off, as they said, for London.

You mentioned before, that Mr. Tyrie gave you a paper of signals to protect you against the French, when you came upon their coast: what did you do with that?—I carried the papers with me to London, and delivered them to Mr. Chamberlayne.

Look at these papers.—These are the papers that were delivered to me by Mr. Tyrie; and that I gave to Mr. Chamberlayne.

Cross-examined by Mr. *Watson*.

You say this is a paper which you gave to Mr. Chamberlayne?—Yes.

What marks are there by which you know it?—There are the two first letters of my name upon it.

When did you give that paper to Mr. Chamberlayne?—It was of a Monday; I think, the 22d day of the month; but I will not be positive to the day of the month: but I am positive this is the paper.

It was on a Monday; in what month was it?—In the month of February.

At what place?—The office in Bow-street.

What carried you with that paper to the office in Bow-street?—A coach.

By whom were you sent there?—By Mr. William Harrison, of Gosport.

Who is Mr. Wm. Harrison?—The master of a vessel he has been formerly, as I am informed; and he resides at Gosport.

(The signals read.)

“Signals.—A St. George's jack at the mast-head, a French ensign at the staff, a weoff at the gaff end, and fire two guns or muskets to leeward.”

Mr. *Morris*. That is an exact copy of this paper that was delivered to Mrs. Hervey, which was with the papers that were in the hand-writing of the prisoner.

Look at that other paper. What use did Mr. Tyrie say you was to make of that, when he gave it you?—I did not understand the English of it; but Mr. Tyrie said, after I had

made those signals, a boat would come off to me, and I was to deliver this paper, and then the packet, and was then to be permitted to go on shore.

Did he say any thing about that paper protecting you?—He said, when I produced that paper, I should not be hurt.

After this conversation, you said, Mr. Tyrie, and the woman who called herself his wife, went to London?—Yes.

Did you keep this packet in your possession?—Yes. The next morning, when I came to think of it, I thought it not right to carry a packet of letters to an enemy's port, without knowing the contents of it. I took this packet to Mr. Harrison, and left it in his hands, to take down the directions: he brought it me again; and I had not kept it ten minutes before captain Harrison came in, and took them up off the table; and I did not see them any more.

Mr. *Watson*. You say you had a packet which was directed in the way that packet was which you had in your hand just now, and that this is the cover it. Did you open it?—No.

Did captain Harrison open it in your presence?—I was walking up and down the room when he opened it.

Was any other person present?—No.

Do you know how many papers there were in that packet?—I cannot swear; I think there were five: but I did not take any particular notice of it.

Had you any conversation at that time about Tyrie with captain Harrison?—I do not know any thing particular.

Did captain Harrison talk of making a hundred pound of the papers?—He did, while we were in captain Standfield's house.

Did he say how he was to make a hundred pound of them?—No.

Did captain Harrison tell you, you must make Tyrie look as black as possible, in order to get this hundred pound?—He did. When I arrived at London, he said, We are going to the office; I would have you make it as black as you can against Tyrie. I said, No blacker than the truth.

Have you had any conversation since with a woman that is in Tothill-fields Bridewell?—Very little.

Do you know a man of the name of Ramsey?—Yes.

Have not you had some conversation with him about Harrison, and this transaction?—I may have had some conversation with him.

Did not you tell him you knew nothing about it but what Harrison bid you say?—No; I am sure I could never say any such thing.

Have you had any conversation with Ramsey, in which you said that you swore to things in Bow-street that you knew nothing about?—Never, to my knowledge. I could not say a thing of that kind.

William Harrison sworn.

Examined by Mr. Batt.

Are you acquainted with William James?—I have been acquainted with him only since this affair happened: I never saw him before.

Do you remember his shewing you a packet of letters?—He did not shew it me, till I entreated him to do it.

Look at this packet: Is it the same that James shewed you?—That is the outside case.

What did you do with that, when you had it in your possession?—I got it to my own house. Mr. James told me capt. Standfield was a friend and acquaintance of his, and desired me to let him take it to him, to ask his advice. I was dubious to let him have it, for fear he should take it away. I opened it. Upon seeing there was a letter directed to the minister of marine, at Paris, I thought it could not be a wine-merchant's business. I then put them into my pocket, hasted to London immediately, and delivered them to lord Stormont's secretary, Mr. Fraser.

Are the contents in this cover the same as when you delivered them?—I believe they are; I delivered the whole.

Cross-examined by Mr. Watson.

At what time did you carry them to London?—On the 19th of February I went. I arrived in London on the 20th.

William Fraser, esq. sworn.

Examined by Mr. Serjeant Grose.

You were, Sir, at that time, under secretary at lord Stormont's office?—I was.

Where had you that packet from?—From Mr. Harrison, in the secretary of state's office.

Are those the papers, as you received them?—They are: they are every one of them marked by me in my own hand-writing.

How soon did you mark them after you received them?—To the best of my recollection, I marked most of them, I believe I might say all, in Mr. Harrison's presence.

Did you receive any more?—I did not.

Did you mark them as you found them in the cover?—I did.

(The outside cover to the packet was in the prisoner's hand-writing.)

Direction: "For captain James; to be opened upon his departure from Dunnose."

Mr. Morris to Harrison. Did you open the outside cover?—A. I did partly, but nothing else.

What was inside that cover?—Letters.

Did you deliver the whole to that gentleman?—Yes; every piece of paper.

And none but what were in that cover?—Not one. There was a little piece of paper besides; that was signals.

Mr. Morris. Now we will read the papers contained in that cover.

N^o I.—(The prisoner's hand-writing.)

"Mr. John De Lisle, à Cherbourg.

"Sir; Mr. Cassin, of Calais, desired me, upon any occasion, to address myself to you at Cherbourg, he having previously satisfied you respecting my solidity. In consequence of his recommendation, I have sent a small sloop to address, on which you will please to load 150 dozen of the best claret, in hampers of 42 bottles; 50 dozen of Burgundy, in hampers of 36 ditto. Send me the invoice and bill of loading by post, and for the amount draw on Mons. Brodelet, in Paris, whom I have given orders to honour your drafts. You may supply capt. James with 50*l.* on my account.—I am, respectfully, Sir, your most obedient servant."

"A Monsieur Jean De Lisle, Cherbourg."

N^o II.—(The prisoner's hand-writing.)

"Mr. John Totterell, à Ostend.

"Sir; This will be delivered to you by capt. William James, to whom you may advance the sum of 50*l.* for which I will be answerable. Please to load, on the vessel that brings him, 80 dozen claret, in four dozen hampers, 40 ditto champagne, in two dozen ditto, 300*lb.* hyson tea, in 25 bags, and 150 tubs brandy.

"Take his receipts for the whole, and transmit to me by post.—I am, respectfully, Sir, your most obedient servant, D. TYRIE."

"London, Feb. 9, 1782."

"Mr. John Totterell, merchant, Ostend.

"Per fav. capt. Wm. James."

N^o III.—(The prisoner's hand-writing.)

"Spithead, Feb. 10, 1782, 6 o'clock p. m.

"Sir; If the bearer should not be able to fetch Boulogne, he will deliver you a packet, directed for Mons. Bonnier. Please to open it, and forward the letter directed for Mons. Brodelet, to the minister of marine, at Paris, with the utmost speed. That directed for Bonnier make your own use of. You may ask him for his letter to M. De Lisle, which you'll please to keep; and acquaint him that M. De Lisle has retired from Cherbourg. He will bring up without the port. You may order the vessel to remain there, if you please. Dispatch him again as soon as possible, and do not suffer his people to have any communication with the shore.—I have the honour to be, Sir, your most obedient and most humble servant, CROIZE."

"A Monsieur Commandant, à Cherbourg."

N^o IV.—(The prisoner's hand-writing.)

A cover, which contained two letters, N^o V and N^o VI. the cover directed "A Monsieur Bonnier, chez M. Dufour, Sellier, Rue de la Cue, à Boulogne."

N^o V.—(In the hand-writing of a woman.)

"Sir; The bearer is ignorant of the business

he comes on—receive and treat with him as a wine-merchant only. Send with him the wine now remaining in your care, and as much more as you can get. Do not delay him. Forward what he brings to Mons. Brodelet with the utmost speed, and desire the commandant to communicate the contents of the note at foot, where needful.

"The *Aréthusa*, *La Prudente*, *Monsieur*, and *Recovery* frigates, which sailed from Spithead last week (2d of February), are hovering off the French coast, to intercept a fleet of ships expected to sail about this time from Cherbourg, Havre, and other ports, with stores for the Bay, to rendezvous at Cape la Hogue."

"M. Bonnier, chez M. Dufour."

N^o VI.—(In the hand-writing of a woman.)

"Spithead, Feb. 10, 1782, 1 o'clock, p. m.

"At sun-rise this morning, No. 98 made the signal for the West India fleet to unmoor, and they are now getting under sail. The fleet consists of about 190 sail of transports, store-ships, victuallers, and merchantmen. No. 98, 111, and 162, are to convoy them to the West Indies, and No. 40, and 101, which sailed with the East India convoy, have orders to join them in the Bay, and proceed; No. 26, and 170, go with them about 300 leagues to the westward, and return.

"No. 122, 126, 119, and 136, are now on the French coast, waiting for a fleet of ships, expected to sail about this time with stores for the Bay. The information received here, says they are coming from Cherbourg, Havre, &c. and to rendezvous at Cape la Hogue for your government.

"No. 183, advised you, in a dispatch, No. 8, to have sailed with the East India convoy, is put back, having run foul of an East India ship, and carried away her bowsprit. This fleet were all seen from the Isle of Wight on Thursday morning; but no news from them have come here since they sailed, and the wind has ever since continued fair at N. N. E. and N. E. It blows now E. N. E. moderate.

"No. 177, with about twelve merchant ships, sailed on Friday evening for Cork. She calls at Plymouth to take the trade from them."

"A Monsieur Brodelet."

[In No. XIV and XV, which contains a numerical list of the fleet, No. 98 is the *Princess Caroline*, No. 111 the *Endymion*, No. 162 the *Alarm*, No. 40 the *Magnificent*, No. 101 the *Renown*, No. 26 the *Berwick*, No. 170 the *Albemarle*, No. 122 the *Aréthusa*, No. 126 the *Monsieur*, No. 119 the *Prudente*, No. 136 the *Recovery*, No. 183 the *Medea*.]

Mr. Serjeant Grose to Capt. Harrison. Do you recollect at what time in the year 1782, the *Princess Caroline* sailed from Spithead?—I believe, in the month of February.

Can you tell me in what month the *Ar-*

thusa, the *Prudente*, *Monsieur*, and *Recovery* frigates sailed?—They went out early in February, upon a secret expedition.

Do you remember the *Medea* sailing?—I cannot say I do.

Do you recollect any circumstance that happened to the *Medea*?—I recollect one of the East Indiamen being damaged at sea; but I can't particularly say what the damage was. I remember the circumstance of one East Indiaman being hurt.

Did the *Endymion* and the *Anson* sail about the beginning of the year?—In February they both sailed, to the best of my knowledge; they went either with the East or West India fleet.

When did the *Magnificent* and *Renown* sail?—I cannot say; but I think they went out with that West India fleet: then they sailed on the 17th of February.

Do you know what is become of the *Enterprize*?—I do not.

N^o VII.—(The prisoner's hand-writing.)

"Gosport, Feb. 10, 1782.

"Mons. Bonnier,

"Sir; Please to send by the bearer the wine left under your care by L. P. with forty or fifty dozen more of the same quality, if it can be got: this last let Mr. B. charge to my account. Give the captain all possible dispatch; and supply with what he may want for the cutter's use. I recommend him to your protection, and am, Sir, your most obedient servant,

D. TYRIE."

"A Monsieur Bonnier, chez
M. Dufour, Selier, Rue
de la Cue, à Boulogne."

Moses Morant sworn.

Examined by Mr. Batt.

You are, I believe, a constable?—Yes.

Do you remember being called upon at any time to assist in apprehending Mr. Tyrie?—I was not at the apprehending of him. Mr. Tyrie was brought to the office. The constable who apprehended him said a great-coat was left at the round-house, where he had been all night. I thought there might be something in that great-coat. I went and took these books (producing them) out of the pocket. I asked Mr. Tyrie if he had a great-coat at the round-house? He said he had, and had three books in it; which are these: they are three printed lists of the navy.

John Frodsham sworn.

Examined by Mr. Batt.

You are clerk to Mr. Wright and the other magistrates at Bow-street?—I am.

Did you go to the lodgings of Mr. Tyrie?—I was directed by the magistrate to go and see that the officer did his duty in searching for the papers. These papers were found at his lodgings; they have all my initials on them. Some were found upon the tester of the bed; some in the trunk, and lying about:

some part were tied up. They are marked on them where they were found. (The papers were,) "A list of the ordnance stores in different forts."—"The ships at Woolwich."—"The state of our National Debt."—"Another list of ships."—"The King's ships at Portsmouth in commission."

James Mailstone sworn.

Examined by Mr. Batt.

Are you acquainted with the prisoner?—Yes.

How long have you known him?—We served our apprenticeships next door to each other in Leith, in Scotland.

Were you applied to by him to be employed in any business?—Yes, at the end of last November, he told me he had got some employment for me; that I was to go down to Portsmouth, and that he would get me commissions to buy poultry and live stock for the East India ships. On the evening before I went away, he desired me likewise to send him an account of all the ships of war that came into port, or sailed from Spithead. I was to let him know what ships sailed with convoys, and what arrived. When I seemed surprised at that, he hinted to me, that he did not send off any advices without shewing them to the ministry.

How came he to hint that to you?—Because I thought it was astonishing that he should send me there to do such a thing as that: another reason might be, that I had known, or heard, before, such things were done; that people had been in custody; and I heard of one man in particular, that had done it, that was an acquaintance of both of us, a Mr. Wardlow.*

Did you set out for Portsmouth?—I did.

What did you do with respect to these commissions he gave you?—I wrote him different letters, acquainting him of some ships that arrived, and some that sailed.

Do you recollect any particular ships you sent him an account of, or any thing that passed upon the subject?—The first thing in particular was about the sailing of admiral Rodney's fleet: he in different letters desired me to send him an account of it.

Did you do so?—I did not. Just before that, I received a letter from him that gave me some uneasiness, and I resolved not to send him any particular account. He was very urgent for me to send him the particulars of the fleet of admiral Rodney. I resolved to make some excuse for not sending it, and I did: I told him in two letters that I had advised him that the fleet had sailed, when indeed I had not sent him any such advice; and I alluded, in one of my letters, to a list I pretended to have sent him a day or two before. I had another letter from him, desiring a captain Bowles to take a list of admi-

ral Rodney's ships, and to sail with it. Captain Bowles came to me, with an introductory letter from the prisoner to me, desiring that captain Bowles would take a list of that; and he enclosed a letter to me in captain Bowles's letter.

Were you to furnish captain Bowles with intelligence, by desire of the prisoner?—Yes, for captain Bowles to take a list in his own hand-writing. Captain Bowles was to sail to Boulogne, or some port in France, to load wine, to run on board the East India ships.

Was Bowles to take that list with him to Boulogne?—He did not say he was to take it to France; but I have no doubt that was the intention of it.

How long did you continue this intercourse with the prisoner, by letter, from Portsmouth?—I went up to London immediately after this, and captain Bowles went with me.

What communication had you with the prisoner in London?—A good deal at times. Captain Bowles and I were at his lodgings at several different times, and captain Bowles then went down to Gosport again; and he was from Gosport to go with his ship either to Chichester, or to some other port upon the coast.

Was that said in the presence of the prisoner?—It was.

And what was to be done there?—The prisoner was to meet him there, and to give him his dispatches about his business.

Did you say any thing to the prisoner afterwards, at Gosport or Portsmouth?—Yes. The first time he came, captain Bowles was returning.

Do you know what time that was?—The particular date I am not certain of, but the queen's birth-day was one of the days he was there.

What passed between him and you there?—He asked me many particulars about the ships that were expected, and told me a great many things relative both to the East and West India fleets; and he asked a great many things of me concerning them: that was the East India fleet that was to sail shortly under sir Richard Bickerton.

Who was with him during his stay at Gosport?—His wife and captain Bowles.

Did you see any thing of any packet of the prisoner's writing while you was at the Crown-inn?—Yes; but that was when he came the second time.

What was that day?—The general fast-day. I know it was.

He came again, then, on the fast-day?—He did.

Who was with him?—His wife.

What did you see him do?—I saw both him and his wife writing letters at the Crown-inn. I think, either upon the Sunday or the Saturday after this, I think it was the Sunday after this evening captain James was there: he said to captain James, he might as well

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* Qu. Waltrond. See the preceding Case.
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case, by means of the evidence given by this man and his accomplices, to convict the prisoner; in which case if they succeed, as it appears to me, you will be led to say upon your oaths, by your verdict of guilty, that a smuggling trade to and from France is evidence, upon the face of it, of a treasonable correspondence with the king's enemies residing in France. What does James's evidence amount to? He says, it was a bargain for 15*l.* to go to France for wines, and that the prisoner gave him signals; respecting which signals a great deal has been said, and to which a great many observations have been pointed. But what comes out upon the evidence of James? The signals were such as were to introduce him to the purpose for which he went; the signals were such, as persons there accustomed to traffic with English smugglers well knew, and were to call out the traders of that country to carry on this traffic with him. He asked of the prisoner, according to his story, whether he could go on shore, and was told in answer, that probably he might, under restrictions, and under peculiar circumstances; but no sailor belonging to the cutter was at any rate to go on shore; nothing was to be permitted that could introduce a correspondence between the crew of his vessel, and the people on the coast of France, nothing that might be turned to the disadvantage of this country, in any way whatever. The signals that were given him, were, not what we had reason to fear, when this prosecution was first opened; not the signals of the fleet of Great Britain, by the communication of which, the enemy might learn how to deceive and entrap our fleets and squadrons: they were not the signals of the East or West-India convoy; but merely signals to be made use of by this smuggler, when he came upon the coast of France, in order to call out the people who were desirous to sell their wares to him, to inform them that he was there ready to receive them; and, lest he should not find a market that would pay for the expence of the duties to the crown, upon his return to England, he was as well possessed, I dare say, of signals to give the people notice to come off to him, and receive his cargo upon our coast. This is all I can make out of the agreement between James and the prisoner.

Then, gentlemen, a packet of letters and some other papers is produced to you, which, James says, was intrusted to his care by the prisoner. Let us consider, for a moment, of what does that packet consist. It was directed, on the outside cover, to captain James, for the purpose that he might take care of the whole contents together. It was intrusted to him; and he was to open it at a certain place, I think, off Dunnose; and opening it, what was he to find? Instructions for his own conduct, which afford no ground even of suspicion. An order addressed to Monsieur Lisle for certain quantities of the

best claret, and of some other wines, with which he was to traffic back to this country. He had farther instructions contained in this packet, that Mr. Lisle was to draw upon Mr. Brodelet for the price; and a letter of credit for 50*l.* was also given to the captain himself, if he should want to take on board his vessel a greater freight than that which composed the order for the prisoner. James was to have this credit for any thing he might think worth his while to purchase. It was not, as might strike you, gentlemen, at the first moment, fifty pounds given to James as a bribe to keep him quiet and secret, or to engage and secure his assistance in the business of a treasonable correspondence: he would not venture to swear that; and the evidence, upon the face of the transaction itself, strongly proves the contrary. It was a letter of credit merely on the score of this illicit traffic; a traffic, I confess, to be blamed and censured, but not a traffic upon which you are to determine that the prisoner has been guilty of high-treason. These orders however for wine were given, it will be told you, upon different persons; and from hence an inference will be drawn hostile to the prisoner.—But why?—The reason was explained by James himself why the orders were so given, and was, that if he could not make one port, there were correspondents at another. The prisoner, it seems, carried on much of this illicit trade. What he wanted now, was a particular quantity of claret, a particular quantity of tea, or a particular quantity of brandy. James was to get these with all expedition. This was the object for which the prisoner sent him upon that voyage, and therefore he was to pursue the purposes for which he was sent. The counsel for the crown have attempted, it is true, by another letter contained in this packet, not in the hand-writing of the prisoner at the bar, to persuade you to believe that the smuggling was merely by way of colour for concealment of the treasonable correspondence. And then, as to this letter not being of his writing, they say, that, being found in company with his hand-writing, it is fair to make use of it as evidence to you, whereby to convince you of the prisoner's guilt.

Now, gentlemen, let us see for a moment, whether it is so or not. I am ready to confess to you, that under all the circumstances with which the papers were produced to you, it was competent for the counsel for the crown to give that letter in evidence; but vast suspicions hang upon it: and as for other circumstances in the case, so far that peculiarly you are to weigh well in your own minds the credit that is due to the two witnesses James and Harrison, one of whom has confessed explicitly, the other of whom has not ventured to deny, that one great object which they had in pursuing this matter with zeal, was to get the reward they expected; Harrison saying it will be a job worth an hundred gui-

neas. And it has been admitted by this witness himself, that upon his first return from London, he said to James, You must go and make the business as black as you can against Tyrie. The inference is left for you, gentlemen; but it is an inference you cannot avoid drawing. It was in order that, by his conviction, they might reap that reward which they were seeking. Besides which you will recollect, that I asked the witness James concerning a conversation with a person of the name of Ramsey, upon the subject, after his having given information upon oath at the justices' office in Bow-street. The fact is, he had a conversation with Mr. Ramsey; and in that conversation, as I am instructed, Ramsey will prove to you, though James had the hardiness himself in a degree to deny it, he told him that he had sworn at the public office in Bow-street what he knew nothing about; that he had been carried there by Harrison; that he had sworn he did not know what; he had sworn to facts, of the truth of which he had no knowledge himself; but it was what Harrison bid him say. This, gentlemen, I shall prove to you by Mr. Ramsey. And another circumstance you will remember is, that Harrison's rancour is demonstrated, as well as his eagerness to obtain a large reward for the conviction of the prisoner.

Under these circumstances, if you are not told by his lordship that the fact of the prisoner's delivering the packet to James has not been proved by two witnesses; and that all the contents of the cover which has come from James's hand, are to be laid entirely out of the case, and ought to make no part of the evidence which, in deciding upon the prisoner's innocence or guilt, you are to consider as the ground of your acquitting him, or finding him guilty; you will at least reflect that these papers come under your investigation with singular marks of suspicion. One of the witnesses to the overt act of sending this packet by James, whose name is Mailstone, appears in the light of an accomplice; and besides he gives reasons for believing that the packet produced is not the one he saw: and you are well aware, gentlemen, that it is not the question for you to try simply, whether you consider that the prisoner at the bar deserves well of the community or ill. The opinion you ought to form of his character and connections, is not the point for you to determine and decide in the verdict you are to give: you are not to convict him of treason because he has been so wicked as to be connected with such men as the last witness called, Mailstone; with such men as James and Harrison, or with others of whom we have heard. What the history of his life has been, or what his conduct has been, ought for a moment to be forgotten by you, or rather to be remembered with this note, that it is not upon these you are now to decide.

The learned gentleman who opened the case to you, told you well and properly, who

the prisoner is, or what the prisoner is, or what have been his connections in life, are not matters for your consideration. Admit that he has pursued that loose and vagabond habit of life which leads men to defraud the revenues of their country, and to smuggle the produce of a foreign clime, even of an enemy's country, into his own; this is not a reason why you should find him guilty of the heinous offence of high treason. You are then to consider, gentlemen, the whole of the evidence which has been offered, and which will be stated to you with such observations from his lordship on the bench, as I am sure must do ample justice to the innocence of the prisoner, with respect to the charge now laid against him, notwithstanding any circumstance of criminality as a smuggler or otherwise. I am satisfied, that in the observations which will be made to you from the bench, where his lordship will aid me by being also counsel for the prisoner at the bar, as far as, according to the truth and justice of the case, he ought to be counsel for him, his lordship will tell you upon what points you are to lay the stress of your examination into the whole subject matter of the evidence that has been thus brought before you, so as to draw a proper conclusion from it; and will convince you that it is by no means a chain of evidence unbroken; by no means a body of circumstances which carry such conviction in the face of them, as is stronger than the positive testimony of ten thousand witnesses.

Such the circumstances were which the learned gentleman opened to you; but such are not the circumstances, in my opinion, which have been proved to you; such, I trust, you will find the circumstances have not been, when you come to weigh and consider and reconsider the evidence amongst yourselves, after having heard the whole testimony in detail laid before you by his lordship, with the observations which he is to make upon it. And if you do not, upon the whole body of this case, find that the circumstances are such as to convict the prisoner of high treason, then you will not find him guilty, whatever may be your opinion of his other offences; whatever may be your opinion of his conduct in this contraband traffic with an enemy's country; which was highly censurable in every possible way: for, although the trade of smuggling thus carried on is doubly wrong, yet, let it be wrong in a degree as high as it may, this is not the crime of high treason. The illicit trade of smuggling is the crime that is proved against the prisoner. High treason, in compassing the death of the king, and adhering to his enemies, is the crime charged against him. But, gentlemen of the jury, the crime charged is what you must find by your verdict, in agreeing to find him guilty. If therefore you do not feel yourselves convinced, beyond a doubt, by what you have heard, or if the witness I shall call to contradict and to destroy the weight of the testimony of James,

shall, by the fairness and consistency of his tale, create a doubt in your minds which does not already exist, then I will venture to assure you, that in such a doubtful case you ought to acquit. And I will only add, that if you should not be perfectly convinced of the prisoner's innocence, doubts of his guilt ought to have the same operation in determining your verdict, as proof of his innocence. If, therefore, you do entertain doubts, I am warranted in saying, under such circumstances, find the prisoner guilty, if in common honesty and common sense you can, if in conscience, and by the oath you have taken, you dare.

EVIDENCE FOR THE PRISONER.

Edward Ramsey sworn.

Examined by Mr. Watson.

Have you had any conversation with Wm. James, the witness who was called just now, since the prisoner at the bar has been in custody, respecting him?—Yes.

(William James called into Court.)

Q. to Ramsey. Have you had any conversation with this man, respecting the prisoner, since his being in custody?—Yes.

Where was it?—In Tothill-fields Bridewell. Mr. James asked me if I would take a walk to Tothill-fields Bridewell.

Did you know James before?—Yes. Accordingly I went with him. Mrs. Tyrie, Mr. Tyrie's wife, was there present, drinking a glass of wine. She abused James terribly: she was in a terrible passion.

What did he say?—He said he knew nothing about it; it was not his fault that brought her there. Then she seemed to be moderate, and did not scold so much.

Relate exactly what James said.—He said he knew nothing of it; that it was not his fault that she was brought there.

What was the conversation about, when he said he knew nothing about it?—With regard to her being taken up. He said, Mr. Harrison had told him several times to paint the thing as black as he could. He was speaking to Mrs. Tyrie, but I was present. Mr. Mailstone was present at the time. When we were examining at the office, in Bow-street, Mr. James said he was sworn then, but he did not know what he was sworn to: being deaf, I presume he meant, but he did not mention that; I understood so.

Court to James. Have you heard what this witness has said?—Yes.

Court. What account do you give of it?—*A.* I went to see Mr. Mailstone there. Mrs. Tyrie came into the room, and began to talk to me very loudly; and said, she must thank me for being there. I said, I did not know I had done her any harm. I paid but little regard to it, as it was a woman's talk. At last, she

said, Did not I hear what you said, when you was examined at the office? I replied, I don't know what you have heard, nor what I said; but I said no more than the truth—That was in answer to a woman's talk—I said I don't know what I said, or what I did; but I said no more than the truth.

The End of the Evidence for the Prisoner.

Mr. Justice Heath summed up the Evidence to the Jury, who almost immediately pronounced the prisoner Guilty.

After the Jury had given in their Verdict, upon the Clerk of Arraignment putting to the prisoner the usual question, "What have you to say why judgment of death should not be passed upon you?" he replied, It is in vain for me to say any thing—Poverty has been the cause of my conviction; because I had not the means to bring my witnesses here. However, I have a hope beyond the grave, and despise every thing that has been done to me.

SENTENCE.

Mr. Justice Heath.

' You, David Tyrie, are to be led from hence to the gaol from whence you came; and from thence you are to be drawn, upon a hurdle, to the place of execution; and there you are to be hanged by the neck; and, being alive, to be cut down, and your privy members to be cut off, and your bowels to be taken out of your belly, and there burnt, you being alive: and your head to be cut off, and your body to be divided into four quarters; and that your head and quarters be disposed of where his majesty shall think fit.'

The following Letter, in Tyrie's hand-writing, was found upon the person to whom it is addressed, who was apprehended for altering Bank-notes.

(Copy.)

" My dearest Sir; The things are ready, not in. To-morrow evening I hope to make my push.—If I fail in this, what you propose is certainly a safe and practicable mode; but, good God! you amaze me so much, that I scarcely know what to think. I really doubted if there was such a man as you living.—Our acquaintance is but short and casual. How then, that am but a stranger to you, can I expect you will run such a hazard for me? There are people in London who owe their fortunes to me, but have not once looked near me. God send I was out! I think I would convince you I was worth serving. Except yourself, I believe few men have more resolu-

tion. I have but few words; but, once in action, neck or nothing! Depend on it, if nothing unforeseen happens, dead or alive, I'll be delivered to-morrow night: it may be a night later before the tools come in, but not more. If I am detected, and you think you can accomplish a rescue in the journey to Winchester, the attempt will be safe, easy, and certain: but the most difficult thing will be to find out when I am to be removed. I am in great confidence with the turnkeys; they say there is no talk of going; they are certain it won't be this week, and promise to give me notice the day before.—This cannot be depended on; but I will tell you how I think it might be reduced to a certainty.—When I am removed, it will be either in the Winchester stage, or a post-chaise; and, in either case, I will go out of the gaol about five o'clock in the morning, or rather half an hour sooner. Suppose then a person was to wait about the Old Bailey and Newgate-street every morning, from about half after three till about six o'clock: let him first come into the gaol, and see my face and person. If I am removed suddenly, he can then come and give you notice; first following to see whether I go by the stage, or in a chaise: if in a chaise, I'll go from the door; if by the stage, I'll go to the inn.—You can enquire where the Winchester stage inns. Bill Lee, and another creature like himself, are all that goes with me, at least so I am told; and them it is only who go with the prisoners removed at assize time. Knowing my time and mode of conveyance, all that's wanted would be three or four men disguised with smock or waggoner's frocks, and well mounted, as if smugglers; they might have crapes for the face.

Nothing should be attempted this side Hounslow; but immediately on the other side of it, or not again till you come to Bagshot-Heath, just about the 23 mile stone.—A horse or a chaise ought to be ready; I would prefer the former; and a frock also to disguise me after I got away.—There are a great many ways which we could double from both of these places.—And, however ridiculous you may think it, plenty of snuff should be provided, to throw in their eyes:—you should also get a punch and an iron, for knocking off the bazils from my legs. We will reach Hounslow about seven o'clock in the morning, and Bagshot-heath about eleven; each about an hour and a half sooner, if in a chaise. If all the parties were ready, a watch would do just as well at Hyde-Park-corner turnpike as at Newgate; only whoever does it must first know my person. Now, suppose I was to get notice about six, seven, or eight o'clock on the evening before I am removed; how could I contrive to let you know? I wish you and Jack would settle some place about this; I could get a person perhaps to go a mile or two, but not further; and it would be imprudent to trust every one with where you live. Turn all this in your mind, my dear friend, as the dernier, in case my first should be frustrated. If you can get men who know the road, they may know a better place nearer London. I doubt you will find it difficult to get the men.—You must tell them it is to rescue a person about smuggling. Adieu! God bless you! I'll expect to hear from you to-morrow.—Your ever faithful and obliged friend."

" Wednesday morning.
Mr. John Graham."

566. The whole Proceedings on an Indictment in the Case of the KING, on the Prosecution of WILLIAM JONES, gent. against the REV. WILLIAM DAVIES SHIPLEY, Dean of St. Asaph, for a Seditious Libel, at the Great Session held at Wrexham, for the County of Denbigh, on Monday, September 1, 1783; Before the Hon. Lloyd Kenyon, Chief Justice, and the Hon. Daines Barrington, the other Justice of our Lord the King of his Great Session of the County of Denbigh :* At the Assizes at Shrewsbury, on Friday the 6th. of August, 1784; Before the Hon. Francis Buller, esq. one of the Justices of his Majesty's Court of King's Bench;* and in the Court of King's Bench at Westminster, in Michaelmas Term following: 23, 24, 25 GEORGE III. A. D. 1783—1784.

[In the year 1783, soon after the conclusion of the calamitous war in America, the public attention was very warmly and generally turned throughout this country towards the necessity of a reform in the representation of the people in the House of Commons. Several societies were formed in different parts of England and Wales for the promotion of it; and the duke of Richmond, and Mr. Pitt, the then minister, took the lead in bringing the subject before parliament.

To render this great national object intelligible to the ordinary ranks of the people, the late excellent sir William Jones, then an eminent barrister in London, and afterwards one of the Judges of the Supreme Court of Judicature at Bengal, composed a Dialogue between a Scholar and a Farmer, as a vehicle for explaining to common capacities the great principles of society and government, and for showing the defects in the representation of the people in the British Parliament. Sir Wm. Jones having married a sister of the dean of St. Asaph, he became acquainted with, and interested in this Dialogue, and recommended it strongly to a committee of gentlemen of Flintshire, who were at that time associated for the object of reform, where it was read, and made the subject of a vote of approbation. The court-party on the other hand having made a violent attack upon this committee for the countenance thus given to the Dialogue, the dean of St. Asaph, considering (as he himself expressed it) that the best means of justifying the composition, and those who were attacked for their approbation of it, was to render it public, that the world might decide the controversy, sent it

to be printed, prefixing to it the advertisement set forth upon the Trial.]

AT the Great Session held at Wrexham, for the county of Denbigh, in April 1783, a bill of indictment was found against the dean of St. Asaph, to which the defendant pleaded Not Guilty. At the Great Session held at Wrexham, for the county of Denbigh, in September 1783, the following proceedings were had:

Mr. *Leycester*. I am going to move your lordships upon an affidavit which is now preparing, and if your lordships please, in order to save the time of the Court, I will just state the subject of the motion, and the nature of the affidavit.

It is a motion that this trial may be put off, upon an affidavit which will soon be presented to your lordship.—The purport of the affidavit is, that a certain body of men, calling themselves the Constitutional Society, contribute to the expences of defending the dean of St. Asaph on this prosecution. That since issue has been joined in this indictment, a certain person, named in the affidavit, has dispersed pamphlets to several of the jury, and throughout this neighbourhood, the purport of which is, to bias and influence the minds of the jury upon this prosecution. It is stated that the person who circulates this pamphlet brings it from the Constitutional Society, and Dr. Brockelsby and Mr. Oldfield, under whose authority he has acted, are sworn by the deponent, to the best of his belief, to be members of that society. Upon the ground of the facts thus disclosed by this affidavit, I am to move your lordships, that this trial may be put off. I need not suggest to your lordships the great impropriety of circulating a paper of this sort, tending to pre-

* Taken in Short-hand by Joseph Gurney.

judge the minds of the jury; and if it were necessary to cite any authority, a similar practice in the case of the King *versus* Martha Gray,* who was indicted for a nuisance, was considered as a sufficient ground to put off the trial. For these reasons, I move your lordships, that the trial may be put off.

Mr. Price (one of the gentlemen summoned on the special jury) said he had never seen any such publication as that alluded to by Mr. Leicester.

Mr. Leicester. I beg leave to add to what I have already said, that I don't mean to throw the least imputation upon any of the gentlemen of the jury. It is sufficient for the purpose of this motion that these attempts have been made.

The AFFIDAVIT of Mr. Wm. Jones read:

In the Court of Great Session for the County of Denbigh, the King, on the Prosecution of William Jones, gentleman, against William Davies Shipley, clerk, on an Indictment for a Misdemeanor.

"William Jones, of Ruthin, in the county of Denbigh, gentleman, maketh oath, and saith, that the defendant in this indictment, is, as this deponent believes, supported and assisted in defending the said indictment, by a certain society of persons, calling themselves the Society for Constitutional Information, and that a considerable part of the expence of defending the same, has been, and is, borne by the said society, with the consent and approbation of the said defendant; he this deponent having seen and conversed on the subject with one Yates, who publicly acts as the secretary of the said society, and also, with another member of the said society, who informed this deponent that a subscription was carrying on amongst the members of the said society, for the purpose of assisting and supporting the said defendant in his defence to the said indictment; and this deponent hath the more reason to believe the said society contribute to the expences of the said defendant in defending this indictment, because this deponent hath seen and read a letter, signed with and published with the name of the said defendant, in several public prints and newspapers, addressed to the said society, which this deponent believes was printed in such prints and newspapers with the privity of the said defendant, in which letter the said defendant expresses himself to be under obligations to the said society for their assistance on this occasion.

"And this deponent farther saith, That since the traverse of this indictment has been at issue, and during the present great session, a person, who calls himself Thomas Blandimer, hath distributed and dispersed through the town of Wrexham, and the parts adjacent, a number of pamphlets or printed pa-

pers, of the same tenor and purport as that hereunto annexed.

"And this deponent farther saith, that on Saturday last he saw and conversed with the said Thomas Blandimer, who declared to this deponent, that he was sent down from London, by one Dr. Brockelsby, to attend the trial of this indictment; and the said Thomas Blandimer, at the same time, shewed to this deponent, a letter, or a copy of a letter, from the said Dr. Brockelsby to the defendant, recommending the said Thomas Blandimer to his notice.

"And this deponent farther saith, that the said Thomas Blandimer also declared to this deponent, that one Mr. Oldfield, who, as this deponent hath heard and believes, is another member of the said society, delivered to him the said Thomas Blandimer, a great number of such pamphlets or printed papers, for the purpose of distributing the same at this present great session to the persons summoned to serve as jurors upon the traverse of this indictment; and the said Thomas Blandimer at the same time declared, that he had used his endeavours to distribute the same accordingly; and this deponent submits to this honourable court, that the obvious and manifest tendency of the said pamphlets is to bias and prejudice the minds of the jurors, and to prevent their coming to hear and give their verdict on the said traverse with impartiality and indifference between the parties.

"And this deponent farther saith, that about two months ago, he this deponent received from the said Yates, who acts as secretary to the said society, several pamphlets or printed papers, purporting to be published and distributed by the said society, in some of which a list of the members of the said society is contained, and in which list the names of the said Dr. Brockelsby and Mr. Oldfield are inserted as members thereof.

"And this deponent saith, that he hath heard, and verily believes, that the said Dr. Brockelsby and Mr. Oldfield are members of, or connected with, the said society.

"WILLIAM JONES."

"Sworn in court, this 1st Sept. 1783.

"KENYON."

[The following is a copy of the printed paper alluded to in the foregoing deposition:]

"At a Meeting of the SOCIETY for CONSTITUTIONAL INFORMATION held on Friday, August the 1st, 1783. Dr. JEBB (Vice-President) in the chair.

"As the liberty of the press is an object of the greatest importance, and essential to the existence of a free state, and as it is of the utmost consequence to the preservation of this great privilege, that British juries should be well acquainted with the powers with which the constitution has invested them, especially in prosecutions for libels:

"Resolved, That the two following ex-

* See this Case referred to, vol. 30, p. 1369.

tracts from the sixth volume of British Biography, on the powers and duty of juries, in prosecutions for libels, be inserted in the books of this society.

“Extract from the Life of John Lilburne, in the sixth volume of Dr. Towers's British Biography, 8vo.

“Whether juries are judges of law, as well as of fact, is a matter that has been much controverted by some. It is observed by an old writer, that ‘among other devices to undermine the rights and power of juries, and render them insignificant, there has been an opinion advanced that they are only judges of fact, and not at all to consider the law.’ This doctrine, when applied to the case of libels, amounts to this: that if any man is charged, in any indictment, or by an information in the court of King's-bench, with writing, printing, or publishing, any book, pamphlet, or paper, which is in such information or indictment stiled a libel, it is not the business of the jury to enquire whether such book, pamphlet, or paper, really be a libel or not, or whether it contain truth or falsehood; but only into the simple matter of fact, whether the person so charged be the author, printer, or publisher of such book, pamphlet, or paper; and to leave the matter of the libel, the determination whether it be a libel or not, entirely to the court. But it is certain, that a custom of leaving the determination of what books or pamphlets are or are not libels entirely to the judges, must have the most fatal tendency with respect to the liberty of the press, on the preservation of which all our other rights essentially depend. Should, in any future period, the people of England be governed by a corrupt, oppressive, and iniquitous ministry, which is certainly a possible and supposeable case; and should any honest Englishman have courage and patriotism enough to expose the bad measures of such a ministry, and to guard his countrymen against their designs; any performance of this tendency, though written with the most upright and patriotic intentions, would, by such a ministry, be most certainly deemed a seditious libel; and it is no great improbability to suppose, that they might, in such a case, get some justice of the court of King's-bench to pronounce that it was so. There have been formerly judges, who were at the beck of the court, and there may possibly be such again. If then the jury are not to judge of the law as well as of the fact, but to follow implicitly the opinion of the judge, they would have nothing to do in such a case, but to find the author of any such production guilty. And thus a man would be legally punished for an action as a crime, for which he would deserve the esteem and the thanks of all his countrymen; and this in a country where the liberty of the press has been long boasted of.

“It is notorious, that, in many cases, juries

do constantly judge of matters of law, as well as fact. When persons are indicted for murder, it is a matter of law, whether the action committed, provided the fact be proved, falls under the denomination of murder, manslaughter, chance-medley, or self-defence; and yet these matters of law are determined by the jury. The court inform the jury what it is that constitutes an action murder, manslaughter, &c. and the jury themselves apply these general principles of law to the particular fact which they are appointed to try, and then bring in their verdict according to their own judgments. ‘All that the judges do,’ (says an old author) ‘is but advice, though in matter of law; and it is the jury only that judges one guilty, or not guilty, of murder,’ &c. And in most general issues, as upon not guilty pleaded in trespasses, breaches of the peace, or felonies, though it be matter of law whether the party be a trespasser, a breaker of the peace, or a felon, yet the jury do not find the fact of the case by itself, leaving the law to the court; but find the party guilty or not guilty generally. ‘The law,’ (says the author just quoted) ‘considering the great burthen that lies upon the consciences of jurymen, has favoured them with this liberty. They may take upon them the knowledge of what the law is in the matter, or upon the truth of the fact, as well as the knowledge of the fact, and so give in a verdict generally, that the defendant is guilty or not.’ And if it be the custom and the right of juries to determine the matter of law in other cases, what reason can be assigned why this right should be taken from them in the case of libels only?

“Dr. Ellis, formerly bishop of St. David's, remarks, that ‘when the cause is summed up, the jury are to determine it,’ i. e. they are to judge of the facts upon which the merit of the cause turns. How far such facts are criminal in law, they are indeed directed by the judges; but still they are at liberty whether they will be wholly governed by the judges' opinions or not; for they give their verdict in general, so that though they think the facts sufficiently proved, yet if they do not think, as the judges think, that such facts are criminal, they need not bring in the parties guilty. The great judge Lyttleton, in his *Tenures*, sect. 386, declares, ‘that if a jury will take upon them the knowledge of the law upon the matter, they may;’ which is agreed to by lord Coke in his *Com.* thereupon: and sir Matt. Hale says, ‘that the jury are judges not only of the fact, but of the law.’ And it seems probable, that by law the juries in all cases ought to be the judges of points of law, as well as of fact; because originally the persons of the jury seem to have been of the nature of judges, and to have sat upon the bench.

“Dr. Pettingal remarks, that ‘the author of the *Trial per Pais*, or *Law of Juries*, though he inclines sometimes to the opinion

‘ of their being confined to matters of fact only, as in p. 220; of the edition in black letter, yet a little after he says, p. 251, ‘ A special verdict is a plain proof that the jury are judges of law, as well as facts; for leaving the judgment of the law to the court implies, that if they pleased they had that power of judgment in themselves.’ Again, p. 336, he says, ‘ When the question is asked the jury, guilty or not guilty, which includes the law, in their answer they resolve both law and fact.’ And beyond all doubt this reasoning is right and just; for how can a jury declare guilty or not guilty, unless they compare the fact with the law, and thereby judge how far the fact comes within the penalty annexed to the breach of the law? and how can they compare without being judges of one as well as the other? But notwithstanding, this doctrine of juries not being judges of law, broached in bad times, and designed for the worst purposes, long prevailed in Westminster-hall,——yet a great and learned judge (lord Camden) as I am informed, lately declared, to his great honour, from the bench, that the jury are judges of law as well as fact.

“ We have one late remarkable instance, and that a noble one, of an English jury’s asserting their right to determine the matter of law, as well as the matter of fact. In 1752, Mr. William Owen,* bookseller, was tried in the court of King’s-bench, before lord chief Lee, for publishing a pamphlet, intitled, ‘ The Case of Alexander Murray, esq. in an Appeal to the People of Great Britain.’ This piece had been voted by the House of Commons to be an impudent, malicious, scandalous, and seditious libel; and the House had thereupon addressed the king to prosecute the author, printer, and publisher thereof; and the author having left the kingdom, the prosecution fell upon the bookseller. The fact of the publication was, in the course of the trial, very clearly proved: and the judge, in summing up the evidence, gave it as his opinion, that the jury ought to find the defendant guilty, for he thought the publication was fully proved, and, if so, they could not avoid bringing the defendant in guilty: for it was the opinion of the court, that the pamphlet was a scandalous and seditious libel, and it had been voted to be so by the House of Commons. But the jury thought they had a right to determine the matter of law, as well as the matter of fact; and they were resolved to assert that right: they thought there was truth and reason in the pamphlet before them, which had been deemed a libel; and, therefore, notwithstanding the opinion of the judge, and the vote of the House of Commons, they brought in the bookseller not guilty.

“ It appears evidently from the very design of the institution of juries, as well as from the

declarations of the greatest lawyers, that the jurors are the proper judges of the whole of the matters which they are appointed to try. ‘ Whether an act was done in such or such a manner,’ says sir John Hawles, ‘ or to such or such an intent, the jurors are judges: for the court is not judge of these matters, which are evidence to prove or disprove the thing in issue. And therefore the witnesses are always ordered to direct their speech to the jury; they being the proper judges of their testimony.’ As then it is the right and duty of jurymen to judge entirely of the whole matter before them, it seems easy to discern what is the proper business of the judge. He is to state the law to the jury, and he may deliver his opinion, where the case is difficult; but they are under no obligation to be guided implicitly by that opinion. The office of a judge, Coke observes, is *jus dicere*, not *jus dare*; not to make any law by strains of wit, or forced interpretations; but plainly and impartially to declare the law already established. And the jury are to apply the general rules and maxims of law, or any particular statute or statutes, to the particular fact which is the object of their enquiry. This being the case, the duty of a judge, in the business of libels, as well as in other matters, is very plain. He is to inform the jury what the law says concerning libels, and they are to apply that law to the particular fact in question. This is the method in which the judges act, when they act rightly, in other matters; and in this manner they certainly ought to act in the case of libels. They are not to dictate to the jury what verdict they are to bring in; but only to inform their judgments, by instructing them in such points of law as they, from their situation in life, may reasonably be supposed to be unacquainted with. A judge ought not to say to a jury, ‘ This book, pamphlet, or paper, is a libel; and if you are convinced that this man wrote, printed, or published it, you must find him guilty;’ but should first declare to them what the law says concerning libels; and then leave them to apply it to the point in question. And Hawles observes, that ‘ if merely in compliance, because the judge says thus or thus, a jury shall give a verdict, though such a verdict should happen to be right, true, and just; yet they, being not well assured it is so, from their own understanding, are forsworn, at least in *foro conscientie*.’ Nor ought any jury to be influenced by either judges, or counsel, who torture sentences in any book, or paper, stiled a libel, into a bad sense, when they are capable of bearing a good one; for it is a maxim in law, that ‘ *Verba accipienda sunt in mitiori sensu* ;’ words are to be taken in that sense which is most innocent. And every jury should remember, that they may presume nothing but innocency; and that they ought to do, until the contrary be proved.

“ An ingenious writer well observes, that

* See vol. 18, p. 1203.

'there is a constitutional reason of infinite moment to a free people, why a jury should of themselves always determine whether any thing be or be not a libel. It is this, that ninety-nine times out of a hundred, these informations for public libels are a dispute between the ministers and the people; and, in my conscience, this very circumstance has made our progenitors retain to themselves the power of determining both the law and the fact, with respect to libels; although they waved or ceded to the judges the power of determining the law in all other respects. Having acquiesced in the power exercised by the attorney general, of informing against what he pleases as a libel, they were resolved not to part with the prerogative of judging finally upon the matter themselves; and in my poor opinion, had they done so, we should, long before this, not only have lost the liberty of the press, but every other liberty besides.'

"In short, the real cause why some judges have been so desirous of propagating the notion that juries are only judges of fact, and not of law, seems to be this; that this doctrine tends to advance their own power and authority, and enables them the better, on many occasions, to carry a favourite point. But we should ever remember, that as trial by jury is one of the most valuable privileges of Englishmen, so it is of the utmost importance that the rights of jurymen should be well understood, and resolutely maintained. Vid. Pettingal's Enquiry into the Use and Practice of Juries, &c. Letter concerning Libels, Warrants, the Seizure of Papers, &c. Ellis's Liberty of Subjects in England, and Enquiry into the Question, Whether Juries are Judges of Law as well as Fact? 8vo. 1764."

"Extract from the Life of Lord Chief Justice Jefferies, in the same Work ;

"In February, 1683, sir Samuel Bernardiston, bart. was tried before sir George Jefferies for the publication of several scandalous and malicious libels. This gentleman was well known to be no friend to the despotic measures of Charles the second, and was therefore obnoxious to the court, but nothing could be found on which to ground a prosecution against him, but by the scandalous practice of intercepting his private letters. Four of these, written in confidence to his friends, and containing nothing more than some free remarks on the state of public affairs at that time, were the libels which he was prosecuted for publishing, by sending them to the post-office; for that was the only method in which he had published them. Jefferies took abundant pains to cause this gentleman to be condemned; and the jury being either weak or wicked enough to bring him in guilty, the chief justice had the conscience to fine him 10,000*l*.

"It being observed on this occasion by sir Samuel Bernardiston's counsel, that no

evidence had been given to the jury, that the letters in question were written 'falsely, scandalously, maliciously, and seditiously,' Jefferies made the following remarks in his charge to the jury: 'It has been objected, (said he) that inasmuch as the words falsely, seditiously, maliciously, factiously, and the like words, are in the information, they would have you believe, that there being no evidence of any such thing as faction, malice, or sedition, or that the man did it maliciously, and advisedly, and seditiously (which are the words in the premises, as I may call them, or the preamble of the information) therefore they must be acquitted of that part. Now as to that, I told them then, and tell you now, gentlemen, that no man living can discover the malicious evil designs and intentions of any other man, so as to give evidence of them, but by their words and actions. No man can prove what I intend, but by my words and actions. Therefore, if one doth compass and imagine the death of the king, that, by our law, is high treason; but whether or no he be guilty of this treason, so as to be convicted of it by another, is not proveable, or discoverable, but by some words or actions, whereby the imagination may be manifested. And therefore my imagining, my compassing, which is private in my own mind, must be submitted to the judgment that reason and the law passeth upon my words or actions; and then the action itself being proved, that discovers with what mind the thing was done. Suppose any man, without provocation, kills another; the words of the indictment are, that he did it maliciously, feloniously, not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil. Now all these things, whether he had the fear of God before his eyes, or not; or whether he were moved by the instigation of the devil, and of his malice forethought, or no; these cannot be known, till they come to be proved by the action that is done. So in case any person doth write libels, or publish any expressions, which in themselves carry sedition, and faction, and ill-will towards the government; I cannot tell well how to express it otherwise in his accusation, than by such words, that he did it seditiously, factiously, and maliciously. And the proof of the thing itself, proves the evil mind it was done with. If, then, gentlemen, you believe the defendant, sir Samuel Bernardiston, did write and publish these letters, that is proof enough of the words, maliciously, seditiously, and factiously, laid in the information.'*

"We have the rather made this quotation from Jefferies's speech on this occasion, because arguments to the same purpose, and indeed nearly in the same words, have been since made use of in libel-causes, by men

* See vol. 9, p. 1351.

who would not be thought to imitate this infamous chief justice. But every man must see the fallacy of this kind of reasoning. In the case *Jefferies* mentions, of compassing and imagining the death of the king, there must be a proof of some overt-act to evidence such a treasonable design. In the case of murder, the proof of the act itself is a sufficient evidence of guilt; because to kill any man, unless it be by accident, or in self-defence, is an illegal and wicked act. But the case of libels is essentially different. If, in a trial for a libel, nothing is proved but the writing or publication, there is no guilt of any kind proved, unless it be proved to the jury, that the book or writing really is what it is stiled in the information or indictment; for writing or publishing are, in themselves, innocent and indifferent actions. *Jefferies* indeed says, 'in case any person doth write libels, or publish any expressions, which in themselves carry sedition and faction, and ill-will towards the government, I cannot tell well how to express it otherwise in his accusation, than by such words, that he did it seditiously, factiously, and maliciously.' And this observation might be allowed, if *Jefferies*, and those who have imitated him, had left it to the jury to determine, whether the writings or books in question did really contain 'expressions, which in themselves carry sedition, and faction, and ill-will towards the government.' But neither *Jefferies* nor his imitators, have ever done this. They have always laboured to make juries take it for granted, on their mere *ipse dixit*, that the books or writings in question were scandalous, seditious, and malicious libels, or whatever else they have thought proper to stile them. And this practice, and these doctrines, have been much inculcated by certain crown lawyers, and such judges as have been disposed at all events to gratify the court. But it is the duty of jurymen to judge for themselves; and that they should do so, is of the utmost importance to the freedom of the press; on the preservation of which all our other rights do most essentially depend.

"THOMAS YATES, Sec.

"Printed and distributed gratis by the Society for Constitutional Information."

Mr. *Bower*. The affidavit and the paper annexed to it having been read, I shall trouble your lordships with very few observations indeed upon it. At the same time, before I make any, I wish it to be understood by every gentleman upon the jury, that if they have conceived the smallest reflection is cast upon them, or any of them, by this motion—

Lord Chief Justice *Kenyon*.^{*} Certainly there is not.

Mr. *Bower*. As to the paper itself, the contents of it appear too obvious to require any

comment to be made upon it; your lordships will at once see whether it has that tendency which is imputed to it. I shall not trouble your lordships with arguing that question, because it would be, as it seems to me, as nugatory as to argue that the sun shines at noon day. The only question will be, whether it is brought home to the defendant. Now the affidavit is sworn in a way that is liable to contradiction, if any contradiction can be given to it: that these papers were distributed by the agents of this society, and for the reasons given, we have proved; and that the defendant and the Constitutional Society are one and the same people; in the case of the King *v. Martha Gray*,^{*} who was indicted for a nuisance, at Richmond Park,[†] there papers had been distributed previous to the trial; upon an application to the court upon that ground, the trial was put off, with the consent of the counsel for the defendant; but the noble lord who presided at that assize, was of opinion, and declared it most thoroughly and fully, that he should have put off that trial if there had not been any such consent. The case there was, the distributing of papers by the defendant's brother only, and it was never brought home to the defendant. I submit to your lordships, that this case is much stronger; it is brought home to the defendant; for unless the defendant can say that he disclaims all the assistance of that society, that he has never had any from it in any shape whatever, and that the society no way interfere in this prosecution, I trust that unless that answer to our affidavit is given in the most pointed and direct terms, your lordships will think this an application not to be resisted, and will put off this trial till another great session.

Mr. *Erskine*. Will Mr. *Bower* indulge me so far as to state what was the substance of those papers that were distributed in the case of the King *versus* Martha Gray?

Mr. *Bower*. I do not know; the case does not report it.

Mr. *Erskine*. I wished you could have stated it to the court, for I know what it was.

Mr. *Manley*. Though your lordships should think the publication itself is not sufficient cause to put off the trial, yet, I trust your lordships will be of opinion, that when accompanied with the circumstances stated in this affidavit, you cannot do a greater benefit to the public, to society at large, than by de-

^{*} 1 Barr. 510.

[†] Of this transaction, which, though now perhaps generally forgotten, in its day excited extensive animosity, see copious accounts in the periodical publications of the time; in *Lysons's Environs of London*, article Richmond; and in *Gilbert Wakefield's Memoirs of his own Life*. This Richmond Park business affords a strong illustration of an interesting remark made by De Lolme respecting the suit between lord Grosvenor and the duke of Cumberland. See De Lolme's *Constitution of England*, p. 373, note, ed. of 1807.

^{*} Afterwards successively Master of the Rolls, and Ch. Just. B. R.

feating the influence which a body of men like the Constitutional Society have endeavoured to effect, by dispersing these papers in this country, for though I have the highest opinion of the gentlemen who at present appear upon this jury, and of the freeholders at large of this county, yet I trust that your lordships will be of opinion, that this pamphlet must necessarily have some influence, and I hope and trust, therefore, that your lordships will endeavour to defeat that.

Mr. *Richards*.* I am also of counsel for the prosecution; I shall not trouble your lordships with any argument, as it is impossible for me to add any thing to what has been already offered to your lordships.

The Honourable *Thomas Erskine*. I shall trouble your lordships with but very few observations in answer to this very extraordinary motion; and, my lords, I feel it to be a very great consolation that what we are doing here is not doing in a corner; that the eyes of the public, and of a free and enlightened public, are upon us, and that whatever your lordships do, and whatever I say, will be judged of by the world. I am persuaded that your lordships' decision will be just, and I have therefore the most perfect confidence that that decision will be with me. That a trial may be put off where any person, whether connected with the party or not, has distributed matters relative to and pointed to the circumstances of the case which is to be determined in a court of justice, I conceive to be a matter perfectly clear; and I should be utterly ashamed to take the exception that the defendant was no party to the distribution, if the pamphlet that has been read in court was such a pamphlet as ought in itself, coming from whatever quarter, to be a reason for not trying the cause. I should be ashamed to make the exception, because I admit that there is no administering justice with propriety, if the minds of the jurors are, by any channel, and in any way, perverted with respect to the trial of the particular cause which they are sworn to determine. On this principle, if there were an issue joined between two individuals, or between his majesty and the subject, as in the case of this indictment, and any man, or set of men, should publish a defence of the defendant, and should examine particularly and minutely all the matters of the cause, and it could be brought home that that paper had found its way to the jurors who were to try it, I should not be afraid, as a judge, of exercising that prerogative of discretion which must belong to the judicial character in every country, namely, the power of postponing, upon such an occasion, any species of trial; but I think I hazard very little in making this admission, after having listened with some attention to the paper which has been read.

* Now (March 1814) one of the Barons of the Court of Exchequer.

My lords, when I see the name of William Jones to the affidavit on which the motion is founded, and when I reflect that that William Jones is the prosecutor, and when I further recollect the busy part that very gentleman has taken in informing the public—not merely of the general principles of the constitution—not of the general rights of jurors in the trial of every question that can be agitated, but of the circumstances of this particular cause, and not only that, a pointed libellous defamation of the defendant, and a condemnation of the particular thing which he himself has brought him into this court to answer for: my lords, when I reflect on these things, I may have leave to observe, that, whatever may be the merits of this application, it comes very ill indeed from him. But I mean to resist this matter upon the injustice and impropriety of it.

My lords, as to the Constitutional Society, they are a body of men who devote themselves to the propagation of that knowledge, without which we are no longer a people; they are ready to answer for themselves: they are, as your lordships know, many of them characters of great respect and consideration in this country; many of them members of both houses of parliament; and when they see themselves thus arraigned, no doubt they will find means to do themselves justice.

My lords, though I have not the gift of prophecy, I did foresee that some attempt or other would be made to put off this trial; I knew that they felt it impossible to face these gentlemen who stand before me; I did conceive some pretence would be laid hold of; but little did I think that the application would have been of this sort. Your lordships will be pleased first of all to recollect—and I shall verify this matter by an affidavit from the defendant—that the pamphlet which the dean of St. Asaph stands indicted for being the publisher of, was the work of sir William Jones; who (his majesty, our gracious master, knowing him to be the author of it; his ministers knowing him to be the author of it; the public knowing him to be the author of it) was appointed to administer the justice of this great country, in the remotest parts of the empire, where seditious characters ought not to be sent; be that as it may, sir Wm. Jones, not the dean of St. Asaph, was the author of this publication; and that worthy gentleman, whose name and character I respect, who is incapable of sedition, or of any other corrupt quality of the heart, and whose talents and virtues are known to many who hear me, avowed himself to be the author of it. Sir Wm. Jones was a member of this Society for the Propagation of Constitutional Knowledge; and that very pamphlet, for which we are standing here indicted; and which I shall insist we have a right to be tried upon to-day, was published by the Constitutional Society themselves, as the work of this worthy member of their own body, upon the second of

August, 1782, six months before it was republished by the dean; for which republication he is called here to answer before your lordships.

My lords, if when a defendant is indicted for a publication of this sort, it be thought an answer to the bringing on a trial that a great body of men are interested, and actively interested, in the issue of it, neither your lordships, nor any other judges, will ever try a question of this nature, for I hope in God that I never shall live to see the time when any thing of this sort shall be published by any individual, that every honest man of the country shall not stand up vigorously in his defence. I should be of that opinion, and however it may suit your lordships, I am not afraid, in this or any other court of justice, to say, that it is the right of every subject of England, when he conceives another man is unjustly arraigned—not for a private act against another—not for a private wrong against another, which is barratry, for if I am either guilty of a trespass, of an assault and battery, or any other private wrong, and that private wrong is made either the subject of an indictment or an action, perhaps no man, or body of men, are to support me; but because men not very ignorant, nor without a great stake in the country to lead them to be aware of countenancing sedition, think fit to support the legality of the general doctrines in the paper indicted, and to publish to the whole world, the general duties of jurors contained in the other, on which the motion is founded, who shall say that that is a reason not to try the cause? and if it be a reason, when is the cause to be tried? for would your lordships' postponing the trial induce that public spirited body of men to remit their labours in that which they think beneficial to the public?

I will now state what this Constitutional Society has done; and if your lordships think fit upon that to put off the trial, I am sure your lordships will have the free consent of the dean of St. Asaph and myself; since, whether we are tried, or whether we are not, we shall be acquitted in the eyes of an impartial public. The crime does not depend upon extrinsic evidence—it is printed; beyond that printing the advocates for the crown know that they have no proof. The crime has therefore been read; and it seems it is an additional crime in others, that ours has been re-published by way of defending us. This body of men, called the Constitutional Society, are arraigned for having taken upon them part of the expence of this trial.

Lord Chief Justice *Kenyon*. That is not imputed to them as any crime as I know of.

Mr. *Leycester*. We have stated the fact. We have not stated it as any offence.

Mr. *Erskine*. You thought the fact material, or you would have expunged it from the affidavit.

Mr. *Leycester*. Undoubtedly.

Mr. *Erskine*. Then if it was material to

be introduced, it is material for me to answer it. I am glad to hear your lordship say it is no arraignment of their proceedings.

Lord Chief Justice *Kenyon*. I wish to be understood it is no arraignment of them here; but whether it may be raised up into another offence, is another consideration.*

Mr. *Erskine*. It is stated upon the face of this affidavit, that the Constitutional Society protect the dean of St. Asaph, and that they are partners in the expence. My lords, if that be a crime, the laws of this country are not extinguished; they are amenable to courts of justice; if it be barratry, it may be punished; but, as your lordship truly observes, it is certainly no crime here. And I am so far from thinking it a crime here or any where, that I am proud to inform your lordships, and all who hear me speak, that that body of men have thought me worthy of defending this cause; I accepted it as a most willing duty, and I am sure I have no other motion to make to your lordships here, than that I may have an opportunity of fulfilling it in the face of the country. The dean of St. Asaph has other counsel here, but this Constitutional Society, as it is called, knowing that a great part of the bar here had been retained, and feeling it to be a public cause, in which they themselves, and the public at large, were interested, requested me to come down in support of it.

Lord Chief Justice *Kenyon*. Upon that I wish to say a word. If you come down not as counsel for the dean of St. Asaph, but for the Constitutional Society, I shall not hear you.

Mr. *Erskine*. Your lordship is too quick. I have not said that I am not counsel for the dean of St. Asaph.

Lord Chief Justice *Kenyon*. I should little conform in such case to what the public expect from me; I will not suffer any impertinent interposition in causes, in those who are no parties to the cause. I don't mean that of you, I am sure.

Mr. *Erskine*. If your lordship would hear me out first, agreeably to the common practice of courts, perhaps we should better understand one another. I shall certainly profess myself to your lordship and the jury, as counsel for the dean of St. Asaph, and the only reason why I mentioned the circumstance relating to these gentlemen, was to shew your lordship that we are not ashamed of any protection that we have received from them. Now with respect to this paper that the Constitutional Society have published; first let us see whether it contains any matter

* In the case of Mr. Jolliffe, who, a few days previously to the time appointed for the trial of an information against him, had at the place of trial given away printed papers calculated to prejudice in his favour persons who might be upon the jury, the trial was put off, and moreover B. R. for the giving away of the papers granted another information against him. See 4 Term Rep. 285.

so referable to the cause in question, so pointed to the matters of which the defendant is accused, as that it may be supposed, in coming into the hands of those who are to try it, to be productive of undue influence, or to prevent the right administration of justice. And there are a few positions that I will put to your lordship:

First, let me suppose a man to be indicted of any crime whatsoever, but particularly a crime of this sort, which is charged to be a seditious libel, for your lordships will not forget the cause that we are trying; the indictment charges, that the dean of St Asaph published this paper, which it terms a libel, with an intent to excite and diffuse amongst the subjects of this realm discontents and suspicions of the king; disaffection and disloyalty to his person; to draw the government of the kingdom into scandal, infamy, and disgrace, and to excite his majesty's subjects to attempt by violence and force of arms to subvert the constitution of this country. They who saw that charge, and who read this book, on which it is founded, saw no connexion between them. They conceived them to be general speculative opinions upon the theory of our happy government; they conceived them to be points, in the propagation and in the maintenance of which they were all equally interested, and which they had a right to support as a common interest; for although a man is not to protect an individual in doing a wrong to another, surely he has a right to maintain the doctrines published by another, though they may be thought a crime by others, or even by the government. Perhaps the Constitutional Society have propagated this paper which has been read; but is there a reference in it, is there an allusion in it, to the particular crime of which the dean of St. Asaph has been charged to be guilty? Does it state the nature of the publication? Does it enter into a defence of it? Does it arraign the accusation? Does it enlighten the minds of the jury with respect to the particular question that they are to try? The case of the King *versus* Martha Gray, which Mr. Bower has alluded to, was for a nuisance. The papers in distribution pending that trial, were not propagating among the jury their right to determine the cause without the interposition of the judge; they did not enter into the general theory of the administration of justice; they did not chalk out the particular duty of the judge, and the province of the jury; no, if my memory serves me right, these papers were distributed pointedly and with a direct reference to the cause that was to be tried, and were not mere general observations upon the constitution, or upon the administration of justice. Now with respect to this paper, sworn to have been distributed, I have not read it, I have only listened to it while it was read, and I confess, that though I listened attentively, there was nothing that struck my ear in it that shocked me,

there was nothing that my short experience tells me to be wrong; there was nothing in it that I think illegal: they seemed to be extracts from different historians, and from different trials, marking out the particular nature of libels, mentioning particular indictments for libels, and the province of the judge, and the province of the jury in those cases; that alone seemed to be the nature of this pamphlet; and I hold it to be impossible ever to try any cause of this kind, if the publication of this paper be a sufficient reason with your lordships to postpone the present trial; because it is only the propagation of particular principles and doctrines, referable to the general constitution of the country, and applicable to the general rules of the administration of justice, which I trust will be ever in circulation, and not pointed directly or indirectly at the particular question which is now to be tried. Will your lordships say that, if a jurymen were to read this, he could possibly gather from it more than what he ought to have known before, namely, that the province of a jury in trying the dean of St. Asaph for a seditious libel, was to determine whether he had published it with those seditious intentions which are mentioned in the indictment; whether he was a man disaffected to the government; whether the language of the dialogue, which is called a libel, was pointed to the particular times, or whether they were only general speculative propositions; and if they were, whether they were consonant to, and consistent with, the laws of this country. Is there any judge now in England will say, that when a jury are sworn to try a cause upon the general issue, that the judgment of the law as well as the fact does not rest with them: if it be criminal to assert the contrary, this paper might be a libel; these people who published it might be libellers; but how can it affect the trial of this cause, and how can the defendant be deprived from being tried by that jury which are struck by an order from your lordship, and impannelled to try it, without its either being brought home to him, or even to one of the jurors? The gentlemen, with that politeness which is natural to them, and which I am persuaded they will never forsake upon any occasion, say, they mean no personal reproach to the jury, but they must pardon me for saying, that it strikes me to be matter of high reproach, however unintended it may be; if the jury, knowing themselves impannelled to try the cause, have refused to see any thing that has any reference to it; and who will dare to charge them with a contrary conduct? How can their minds possibly be affected by it? And will your lordships say, that these twelve gentlemen, who at this great session are impannelled, as a special jury, to try the indictment, shall not try it, because certain people in London have thought fit to publish extracts from certain books, stating the general rights of jurymen,

and the general law and constitution of this country?

I hope your lordships will not forget, that the very object of this prosecution is, to determine, whether the sentiments contained in this dialogue, are consonant to the laws, the constitution and government of the country, or pointed to stir up sedition and overturn them. It is impossible for a public prosecution to come to a decision in this illuminated, free and active nation, without a vast number of men interesting themselves in the determination of it, considering it as a general question, referable to all their rights; and how is it possible for your lordships to say, that this is not the time, and that any other time will ever arise? for when a motion is made to put off a trial, your lordships know that the time is not to be indefinite. If it be moved on account of the absence of a material witness, the time of that witness's expected return must be stated. Upon this principle, when will the dean be tried? never, if he is not to be tried now. And the purpose of these gentlemen, is, that he shall never be tried, as they are afraid of the triumph that an honest man must derive from the integrity and justice of the jury.

[Here some of the audience clapped, and the court fined a gentleman 20l.]*

I was saying, my lords, that it is my opinion, the prosecutor of this indictment dreaded the event of it, because most unquestionably your lordships must see, that if that which has been done amounts to a crime, for which the authors of it are punishable by the law, they may be punished; but the evil, if it be an evil, has gone forth; the evil can have no limitation; it will be equally an objection to the trial of the cause to-morrow as to-day, and next year as this; for I confess, I have that opinion of the Constitutional Society, if what the prosecutor says in his affidavit be true, that it does come from them, that there is no power in this country, that will either be disposed to punish or correct them, for the general propagation of any doctrines which lead only to the illumination of the people, in the rights of administering justice. With respect to the dean of St. Asaph, the gentlemen have said nothing in their affidavit, except that the dean is protected by this society. The dean of St. Asaph is undoubtedly protected by this society; but the dean of St. Asaph carries on his defence at his own expence; the dean of St. Asaph has his own counsel here; I am the dean of St. Asaph's counsel, as well as the other gentlemen; and the Constitutional Society, however they may be interested in this general question, and however they may be glad to have those persons employed in it, who meet with their approbation, and to reward them by professional compensations; yet, my lords, the dean of St. Asaph stands here for himself. Now, Mr.

Bower is pleased to say, that it was necessary to bring it home to the party to be tried. He stated that in the case of the nuisance, it was brought home to the defendant's brother; that was such an agency as was not easy to be disputed; for when you see the brother of a defendant publicly distributing papers, at the time of an assize, you may naturally conceive, that the defendant, in whose favour they are distributed, is privy to it; but I am prepared to offer your lordships an affidavit on the part of the dean of St. Asaph, that he is not privy to it; that he is not consenting to it; that he is extremely sorry that any thing of any sort, whether it be good, or whether it be evil, should be published concerning him. The dean of St. Asaph disclaims all connection with this paper; and if public-spirited men will publish resolutions in the newspapers concerning him (as they have always considered him to be an object of unjust malice and revenge, and not the object of censure from a court of justice) how can the dean of St. Asaph help that? If your lordships, though your time is better employed, would look into the newspapers, you would see those resolutions published respecting it; you must have seen it on various other occasions. Your experience must tell you, that it has been the same in every great cause that has been tried in this country. Was it not so at the time of Mr. Wilkes's trial,* and the reversal of his outlawry? Was it not so at the time Mr. Almont† was prosecuted for publishing the letters of Junius? Can it ever be otherwise when men are prosecuted in a free country, for that in which the people conceive they have an interest? If the dean of St. Asaph be a person justly accused of sedition, these general doctrines will be of no avail to him. There is nothing in the pamphlet, which can then defend him. Nothing that has been read or annexed to the affidavit can be any sort of justification to the dean, provided the jury shall find that criminal intention, which I know is not to be found in it; if your lordship, taking this publication into your hand, shall see that it does not contain the name of the dean of St. Asaph, that it does not allude directly or indirectly to the publication of any particular paper, that it does not allude directly or indirectly to the trial of any cause, that it does not state to the jury, or to the world, that there is even any person indicted for a misdemeanor before your lordships, that it has not the most remote allusion or reference to the matter in question before you, will you put off the trial of this cause upon an affidavit which states nothing more than the mere publication of the paper in question? for there is nothing extrinsic in the affidavit, the paper is tacked to it, and is the burthen and sense of it; for the affidavit goes no farther than to state, this has been endeavoured to be published in Wrexham;

* See Stone's Case, A. D. 1796.

* See Vol. 19, p. 1075.

† Vol. 20, p. 803.

and I am persuaded the gentlemen cannot produce to your lordships any one case in the law of England (and I will give them the range of all precedents they can find in the books) where a trial has been put off simply and merely because upon a public trial between the king and the subject, relative to a seditious libel, a general disquisition containing extracts of the different books upon that subject had been published by any man or body of men in the kingdom, and circulated (though that is not sworn) even within reach of the jury. It might be a challenge to any particular juror that had read it.

L. C. J. *Kenyon*. Do you find that among the heads of challenges?

Mr. *Erskine*. No, my lord, I do not; but let them shew me any one part, in any of those eight pages, that relates directly or indirectly to this subject.—I will detain your lordships no longer upon this head, conceiving it to be impossible you should entertain an opinion, that because the Constitutional Society have printed this paper, it is sufficient to carry the effect of the motion, after the affidavit which I shall presently read, in which the dean declares positively and solemnly, that he has not published it, and that he has not propagated or dispersed it.

L. C. J. *Kenyon*. It is not imputed to him, I am sure I do not impute it to him.

The Dean of *St. Asaph*. It is impossible; it is not consistent with my ideas of propriety.

L. C. J. *Kenyon*. I believe you are totally incapable of it.

Mr. *Erskine*. Your lordship has been so good as to save me the trouble of defending my client, so far as relates to himself; and as you have stated that, from his liberality of sentiment, you believe him incapable of doing this, will your lordships say, that he is capable of sedition against the government, and not fit to be brought to trial before the gentlemen of the neighbourhood where he lives? Is there any thing in this which can, by any possibility, shew that it is the work of the dean of *St. Asaph*? Upon the contrary it is shewn that it was published by the Constitutional Society, and not by him, and, as your lordship acknowledges, even to himself, without his privity. Then what is there to prevent his trial? Why am I not, in the name of justice, to demand, that the jury now impanelled may proceed upon their duty, when there is nothing in these pages that can at all affect, by any possibility, the minds of the jury with an improper bias on the subject? for, in my mind, it contains no other doctrines than such as any judge in England would be very much ashamed to deny, when printed and published in the world, and to offer as a reason to the public for putting off this trial.

From a long acquaintance with your lordship, which has always afforded me great pleasure and comfort, I rest with the greatest confidence, your lordship will determine ac-

cording to what you feel to be just, and no man knows better what justice is: however you may think the publication improper, or may wish the Constitutional Society had not published it; though you may think with me, that all these things had better have been let alone, and the administration of justice left to its ordinary course; though you may think it amounts to a misdemeanor, in being published at this time, and may wish to reprobate it in your charge to the jury, and may speak, not only to them, but to all under your judicial administration, in the same language, yet, I persuade myself, that sitting in justice on this particular trial, you will think that neither the rights of the crown, nor the peace of the community, nor the administration of right, can be at all affected by this publication.

Mr. *Corbett*. My lords, this unsuspected and most extraordinary application, as it is styled by my learned friend, having received the completest and fullest answer, it must seem an indiscretion, I know it seems a presumption, in me to rise to address your lordships; but there is one short, one natural, one unavoidable, observation upon this question, which struck my mind the instant my learned friend, Mr. *Leycester*, opened his application. It is an observation which I felt an inclination to suppress; if my learned friend Mr. *Manley*, had not, by an admission of his, called me up, I should have suppressed it. The observation is this: the present application made by the counsel for the prosecution, is the most scandalous, the most gross attack upon the characters of the gentlemen of this country, that ever any anonymous, any paltry prosecutor ever instructed his counsel to make; there never was a prosecutor who before dared to make it! My lords, it is this: that the publication of these pamphlets have had such a necessary undue influence upon the minds of the gentlemen of the jury, that they come here unfit to be trusted, as they are with this doubtful cause. If that proposition, by your dismissing the trial of the cause on this day, receives the sanction of your lordships' authority, I will venture to pronounce, though I pronounce it with sorrow, and condole with the gentlemen, whilst I do it, that they must go to their homes with that horrid stigma on their character, that they have been this day pronounced, either to be men whose understandings are not sufficiently strong to support the honest dictates of their hearts, or whose hearts are not sufficiently upright to obey the dictates of their reason.

L. C. J. *Kenyon*. In all cases, where one has the least doubt in the world, it is fit to get all the information one can upon the subject; but in a question, where there is no room for me to doubt, I wish, Mr. *Leycester*, to save you the trouble of making a reply.

I am very sorry for what fell from the learn-

ed gentleman who spoke last,—“ That this is a scandalous attack upon the jury, and that when they go from hence, they must go disgraced to their country, as men not fit to try this doughty cause.” Now, upon the gentlemen of the jury it is no attack upon earth; the single question is, whether means have or not been used, which by possibility may have some effect upon men's minds in the decision of this cause?

A vast deal has been said upon this occasion, very eloquently and very ably said; but certainly not very much to the purpose of the present motion; and I have that intimate acquaintance with the learned gentleman's judgment, as well as his other great abilities, as to collect, with pretty great certainty, that a great deal was not meant to be addressed to me, but to some other part of the audience.

The single question now is, not whether the dean of St. Asaph is guilty or not guilty, whether he is to be acquitted or convicted, but whether there may not be another season found out, in which this cause may probably be decided with more impartiality, when the minds of men may not be prejudiced by any such means as those which are the subject matter of this motion?

We have nothing to do with the question, who wrote this pamphlet, or who did not; however, it seems now to be avowed, that sir William Jones, a person who did not choose to send it forth into the world with his name to it, is the author of it. It is very true, as has been stated by Mr. Erskine, that he is gone in a judicial capacity into a country, where it would be very unwise to send a man in that character who has any thing seditious about him. Whether it will be proper to review that appointment or not, is not for me to say; it is certainly a thing fit to be considered, and soberly and seriously considered, by those to whom it belongs to consider it.

It is and must be admitted, that publications which are calculated with a view to prejudice the minds of men, who ought to come to compose a jury, without any pre-conceived opinions to decide upon the subject—I say it must be admitted, that any publications of that kind, whether made by the party interested in the question, or by strangers, is sufficient reason to put off the trial of the cause, in order that the minds of those who are to decide, may return to a proper tone, and that they may not be put into a situation which no man sitting in judgment ought to be in, namely, having formed a prior opinion upon the point; for that jurymen would be extremely disgraced, who should put himself into that box, having made up his mind upon that subject before he heard it discussed; *non sum doctus rere instructus* is the language a jurymen ought to hold, he ought to have no wishes upon the subject.

But it is said that this publication has no view to the present cause; and the reason

given is, because the prosecution of the dean of St. Asaph is not at all mentioned in it. Now that is easily said; but is there one man living who heard that asserted in argument that would subscribe to it? I am sure the learned gentleman who introduced it into argument, has a mind much too enlightened to have been imposed upon by that, if it had fallen from another. What! has this nothing to do with the cause, which is published in the place where the cause is to be tried—which is sworn to be circulated since the jury were struck—during the time of the assize—in the assize town? The persons who circulate it, if they were called upon and would avow the truth, would undoubtedly avow, that they circulated it for some purpose. Papers of this kind are not circulated to answer no purpose whatever; it comes from a society who have interfered in this business; circulated during the session, when this cause was in some degree agitating men's minds, and circulated in the place where the cause was to be tried; in my apprehension it would be a disgrace to those who are to administer justice, if they were to permit their minds to balance upon the present occasion; it is no more nor less than this; ought justice to be fairly administered, or are we to suffer the sources from which justice is to flow to be polluted, and then to go and expect to draw justice at that source? It is a question upon which no man's mind can fairly balance.

I remember the case of the King *versus* Martha Gray, which had been referred to, extremely well; and I remember also, that upon that occasion, the gentleman who was of counsel for the prosecution, stood in the situation in which the learned gentleman at the bar now in a great measure stands, viz. at the head of the home circuit; the person I allude to was, Mr. Knowler, then recorder of Canterbury; I am sure that Mr. Erskine meant, in discharging his duty to his client, to act, and will always act, with as much propriety as Mr. Knowler, or any body else; however upon that occasion, Mr. Knowler took a different line of conduct; as soon as he was told that there was a publication which might prejudice the minds of men, and affect the cause, he, to the best of my remembrance, desired that the cause might not be tried;* and I remember lord Mansfield, in stating that transaction in court, said, that upon that occasion Mr. Knowler had consulted his own honour, and behaved as became a good citizen. I am sure I do not hint or impute a contrary conduct to Mr. Erskine; he thinks that the present publication does not tend to pervert justice.

* “ Papers having been distributed by the prosecutor to influence the decision of a popular question, a right of way claimed through Richmond Park, the prosecutor's own counsel moved to have the trial postponed, which was accordingly granted.” Per Kenyon, then Ch. Just. B. R. 4 Term Rep. 289.

But it is said that other causes have proceeded, although there have been many publications about them, and the case of Mr. Wilkes's outlawry, and the prosecution of Mr. Almon, the bookseller, for the publication of a libel, are adverted to.

In the first place, it will be recollected, that the cause of Mr. Wilkes was one which was not likely to be affected by publications, because no jury had any thing to do in the case; it was a question of law, which had been agitated before the judges, and which they alone were to decide. As to that of Almon, what the cause and the publication was, I don't know; but this I know, that unless the application was made, and was unsuccessful, it affords no precedent, and has nothing to do with the point. Courts can only decide upon cases which are brought before them; much mischief is done in the world, and the people who transgress the law, and do the mischief, are not punished for it, because they are not brought to judgment. Courts discharge their duty when called upon, and when a cause or delinquent is brought before them, they do that which is right upon the case.

The constitution of this country has done all that human prudence can do, that justice should be administered by those who have no wishes upon the subject; it is for that reason that various challenges are given by law to a jurymen. A relation, in however remote degree, cannot sit upon a trial, and yet the law does not mean to say that all the relations are villains. The challenge is not deemed a scandalous attack; it is enough to say, general rules must be laid down, adapted to the case of evil men and good men. If by possibility evil may creep in, shut the door as close as you can; the law, I say, has done as much as human wisdom could do to keep the streams of justice pure and entire; it has given challenges for various reasons; it has prohibited persons interested from being witnesses; but human nature, in the state of corruption in which we find it, always is prompt to transgress all the bounds that common and ordinary rules can prescribe, and it is to these particular cases, therefore, that that which Mr. Erskine called the discretion of the court is to apply.

And this case now is applied to the distraction of the court: the court have this laid before them. I have been admonished that the transactions of this day are not done in a corner, but that I am acting in the face of the world, who will judge of my conduct: I thank the learned gentleman for that admonition, though it would not have escaped me. I am answerable to the government and the public for all my judicial acts, and for this day's conduct; and I shall be very prompt and ready to answer for it. The question put to me is,—Is this the fit season to administer justice in the cause?—It may be the fit season, in some men's apprehensions, that the

cause should be heard, but is it the season to administer justice? Am I sure that this paper can have no effect upon any men's minds? The jury I am sure will not believe me to speak with any disrespect of them; the remainder of the jury may be composed of other men as honourable as those that are now in the box, and I know that there can be no men of more honour; but men's judgments may be imposed upon by their wishes, and submit to their passions. If there were no means of biasing men's minds, but if that which was perfectly right was done by all men, we need be under no apprehensions from any illicit practices; but having an idea that this paper is of a pernicious tendency—being of opinion that it may affect some men's minds—being of opinion that nothing ought to be published, during the pendency of a cause, and distributed, which can possibly affect men's minds—I am therefore most clearly of opinion, that the trial of this cause ought not to proceed.

Mr. Justice Barrington:

I entirely agree with my Lord Chief Justice. The trial by jury is undoubtedly the most perfect of all trials, but it is only so when juries come to decide a cause without any prejudices on one side or the other. Now it has been proved, by the affidavit read in court, that a pamphlet has been circulated in the town of Wrexham, during the time of the great session, which relates to prosecutions for libels, and which is addressed to juries, to inform them what may be their duty: I shall not mis-spell any time in contradicting what is there asserted; I will only say, that it is contrary to what seems to have been the opinion of every judge since the time of the Revolution, in the trial of libellers and questions of very considerable expectation; I allude to the case of the King *versus* Tutchin,* which was tried in the time of king William, by lord chief justice Holt; the case of the King *versus* Franklin,† tried in the reign of George the second, by lord chief justice Raymond; and lastly, to the case of the King *versus* Owen, which was determined by lord chief justice Lee, who gives an express opinion on the point; but, however, I shall not take up any farther time in contradicting any thing that may be asserted in this pamphlet, but as it has been circulated in the town of Wrexham, just at the eve of this cause being brought on to decision, it is impossible to say but it may have had its effect upon the minds of the jury; and if it has been read by any one of them, it has been read *ex parte*. They have heard no answer to it, therefore it is likely to make the more impression. I entirely, therefore, agree with my Lord Chief Justice, that this is a proper ground to defer this trial till another great session, when perhaps the jury will come with more unpreju-

* See vol. 14, p. 1095.

† Vol. 17, p. 625.

diced minds. I agree with Mr. Erskine, that it was very far from being blameable to publish this pamphlet in London; what is censurable is, the circulating it at Wrexham during the time of the assizes, and after the prosecution was at issue. Every man has a right to publish what he pleases with regard to points of law, provided he does not do it in a place where it is likely to prejudice the jury in the trial of a cause; and this is what I lay my finger on, as the material reason for deferring this trial to another great session.

Mr. *Erskine*. In the course of what I had to say, I mentioned an affidavit of the dean of St. Asaph; I beg it may be read. I don't mean to do it by way of controverting your lordships' decision, but to shew, that the dean of St. Asaph was not privy to the distribution of this paper.

L. C. J. *Kenyon*. Read it.

The AFFIDAVIT of the Dean of St. ASAPH read.

"In the Court of Great Session for the County of Denbigh, the King, on the prosecution of William Jones, gent. against William Davies Shipley, clerk, for a Misdemeanor.

"William Davies Shipley, the defendant above named, maketh oath and says, that the publication annexed to the prosecutor's affidavit, was not written by him, or with his privity or consent.

"And this deponent farther says, that so far from being privy or consenting to the publication or distribution of it in this county, or within reach of the jurors, that the only copy he ever saw of it, was in the possession of one Marsh, and that he desired the said Marsh not to distribute that or any other paper, pending the cause; and that he does not know that any such paper as is annexed to the prosecutor's affidavit, has ever been circulated in Wrexham, or within the county, or amongst or within reach of any of the jurors, summoned upon the special jury, to try the traverse between the king and this deponent, or amongst or within reach of any of the common jurors, who might have been annexed as talesmen to the special jury for default of special jurors, or amongst the people at large, save from the said prosecutor's affidavit.

W. D. SHIPLEY."

"Sworn in Court, this 1st of Sept. 1783. KENYON."

Dean of *St. Asaph*. My lords, I shall certainly bow down with the utmost deference to your lordships' decision; I would by no means wish to interfere in a point of law with your lordships; I have no doubt of your doing complete justice. I only wish your lordships to consider the nature of the prosecution against me, the mode in which it was first commenced, the methods by which it has

been carried on to this moment; I wish your lordships to consider that it is not through any fault, not through any indiscretion, of mine, that the motion comes before you; I am perfectly innocent of any intention to prejudice the jury, nay so far was I from being privy to the publication of this pamphlet, that when a bookseller informed me, he had some of them, I insisted upon their not being dispersed, upon his locking them up till after the trial. I wish your lordships to consider the great expence I have been put to, the anxiety of mind I have been under, the prejudice done to my character, the damage done to my innocent family; if your lordships consider all this, your lordships have certainly a power to bring my trial on, and I trust you will exercise that power. My lords, it may at any other period be in the power of the prosecutor to do the same thing again; he may provide another Mr. Blandimer, or any body else, to come down, and disperse papers of this nature. All I want is to have my character clear in this county.

I need not remind your lordships, that this prosecution stands upon the face of it in the name of Jones; so it appears, for that William Jones's master chose to stand behind the curtain till he thought his great name and connections might avail him. When it was thought expedient to apply to government, then steps forth Mr. Fitzmaurice, and presents a memorial to the Treasury-board, modestly requesting them to take the prosecution off his hands, or, in other words, to gratify his malice with the public money. My lords, the Treasury saw the proposal with a proper indignation; the Treasury rejected it; the crown lawyers declared, when they gave in their opinions, that it was untenable, that it was unadvisable.

L. C. J. *Kenyon*. I doubt whether that business is exactly stated.

Dean of *St. Asaph*. The Solicitor General in particular said it was not tenable; and the Attorney General said the prosecution was not advisable.

L. C. J. *Kenyon*. If they differed in opinion not much can depend upon it. Nobody will say that Mr. Wallace ever subscribed to such an opinion; and he is second to no man in the profession in point of ability. But whatever his opinion may be, and whoever may be in possession of it, it should not have been alluded to.

Dean of *St. Asaph*. My lords, have the government prosecuted? have they taken it up? will any one dare to say that government are prosecutors? My lords, Mr. Fitzmaurice, having met with this disappointment, it appeared in the public papers, and was circulated, industriously, by his emissaries, that he asked, and obtained, an audience of his majesty. My lords, it is hardly credible that any man who—

L. C. J. *Kenyon*. I should be very sorry to stop you: this is nothing but a motion to put

off the trial; I shall not suffer it to be the vehicle of censure upon respectable characters. As for Mr. Fitzmaurice, if he has done any thing amiss, he may be punished. I am sure I don't wish to shelter him.

Dean of *St. Asaph*. This is to shew that they shift the prosecution from one to another.

L. C. J. *Kenyon*. I really am sorry to stop you. I owe you all the respect due to the very high station you fill; but must not suffer a motion about a cause to be the vehicle of censure (to use no harsher word) against men, who hold high characters in the country.

Dean of *St. Asaph*. Notwithstanding this prosecution is under Jones's name, Mr. Fitzmaurice declares, that if government will not take it up, he has nothing more to do with it.

Mr. *Erskine*. I mean to annex that letter to the affidavit.

L. C. J. *Kenyon*. I am sure, from your great abilities, you will not suffer yourself to be withdrawn from your line of duty, so far as to bring into this cause any thing that does not belong to it.

Mr. *Erskine*. We will annex the prosecutor's letter to the affidavit of the defendant.

L. C. J. *Kenyon*. If you, in your sound judgment, think it fit to annex it, annex it by all means; the affidavit will be filed immediately.

Dean of *St. Asaph*. We can prove this to be the prosecutor's letter.

Mr. *Leycester*. I beg leave to say you cannot; it is not evidence.

L. C. J. *Kenyon*. *Modus in rebus*—there must be an end of things.

Dean of *St. Asaph*. Think, my lord, of the anxiety I have suffered and the expence I am put to; let me stand or fall by the decision of this jury; let me, if innocent, once more stand up as an honest, injured man; if guilty, let me be dragged to a dungeon.

L. C. J. *Kenyon*. When the jury have given their verdict, if they find you guilty, the Court will then consider what judgment to pass.

Dean of *St. Asaph*. My lord, in God's name let me have a verdict one way or the other! don't let me be kept longer in suspense!

L. C. J. *Kenyon*. I desire that after I have given the judgment of the Court, that judgment may not be talked about; I have given it upon my oath, and am answerable to my country for it. I have been before reminded that these things are not passing in a corner, but in the open face of the world; I hope I need not be admonished that I am to administer justice; if I have done amiss, let the wrath and indignation of parliament be brought out against me; let me be impeached; I am ready to meet the storm whenever it comes, having at least one protection—the consciousness that I am right. In protecting the dignity of the Court, I do the best thing I can do for the public; for if my conduct

here is extra-judicially arraigned, the administration of justice is arraigned and affronted, and that no man living shall do with impunity.

Mr. Justice *Barrington*. In all cases whatever it is usual for either plaintiff or defendant to speak by their counsel. You are assisted by a most able counsel, and you would not be guilty of any impropriety, if what you wish to offer to the Court were first suggested to him, for he would then determine of the propriety of suggesting it to the Court.

Mr. *Erskine*. Your lordships have conducted yourselves with great courtesy and propriety to me; I will now submit to your lordships, why I have a right to annex this publication to the dean of *St. Asaph's* affidavit.

L. C. J. *Kenyon*. I will not argue the point with you, if you choose to annex it, annex it.

Mr. *Erskine*. This is quite sufficient, because I mentioned it in the course of my argument.

L. C. J. *Kenyon*. I would have a court copy of this affidavit, and the paper annexed, laid before the king's Attorney General.

Mr. *Erskine*. And will not your lordship have the Dean's answer to it laid before the king's Attorney General?

L. C. J. *Kenyon*. I shall order this.

[The cause was ordered to stand for trial at the next Great Session.]

At the Great Session, held at Wrexham, for the county of Denbigh, in April, 1784, the prosecutor having obtained a *Certiorari*, which was allowed by the Court, removed the indictment into the court of King's-bench, when the Court directed it to be tried at the next assize at Shrewsbury.

Friday, August 6, 1784.

The Trial came on, at the assize at Shrewsbury, before the hon. Mr. Justice Buller.

INDICTMENT.

In the Court of Great Sessions, for the County of Denbigh.—The jurors for our sovereign lord the king upon their oath present, "That William Davies Shipley, late of Llanerch, in the parish of *St. Asaph*, in the county of Flint, clerk, being a person of a wicked and turbulent disposition, and maliciously designing and intending to excite and diffuse amongst the subjects of this realm, discontents, jealousies, and suspicions of our lord the king and his government, and disaffection and disloyalty to the person and government of our lord the now king; and to raise very dangerous seditions, and tumults, within this kingdom; and to draw the government of this kingdom into great scandal, infamy, and disgrace; and to incite the subjects of our lord the king to attempt by force

and violence, and with arms, to make alteration in the government, state, and constitution, of this kingdom, on the 1st day of April, in the 33d year of the reign of our sovereign lord George the 3d, now king of Great Britain, &c. at Wrexham aforesaid, in the county of Denbigh aforesaid, wickedly and seditiously published, and caused and procured to be published, a certain false, wicked, malicious, seditious, and scandalous libel, of and concerning our said lord the king, and the government of this realm, in the form of a supposed Dialogue, between a supposed Gentleman and a supposed Farmer; wherein the part of the supposed Gentleman in the supposed Dialogue is denoted by the letter G. and the part of the supposed Farmer in such supposed Dialogue is denoted by the letter F. entitled, 'The Principles of Government, in a Dialogue between a Gentleman and a Farmer;' in which said libel is contained the false, wicked, malicious, seditious, and scandalous matters following: to wit, F. (meaning the said supposed Farmer) Why should humble men like me (meaning the said supposed Farmer) sign or set marks to petitions of this nature? It is better for us Farmers to mind our husbandry, and leave what we cannot comprehend to the king and parliament. G. (meaning the said supposed Gentleman) You (meaning the said supposed Farmer) can comprehend more than you (meaning the said supposed Farmer) imagine, and as a free member of a free state, have higher things to mind than you (meaning the said supposed Farmer) may conceive. F. (meaning the said supposed Farmer) If by free you (meaning the said supposed Gentleman) mean out of prison, I (meaning the said supposed Farmer) hope to continue so as long as I (meaning the said supposed Farmer) can pay my (meaning the said supposed Farmer's) rent to the 'squire's bailiff; but what is meant by a free state? G. (meaning the said supposed Gentleman) Tell me (meaning the said supposed Gentleman) first, what is meant by a Club, in the village of which, I (meaning the said supposed Gentleman) know you (meaning the said supposed Farmer) to be a member? F. (meaning the said supposed Farmer) It is an assembly of men who meet after work every Saturday, to be merry and happy for a few hours in the week. G. (meaning the said supposed Gentleman) Have you (meaning the said supposed Farmer) no other object but mirth? F. (meaning the said supposed Farmer) Yes, we have a box into which we contribute equally from our monthly or weekly savings, and out of which any members of the club are to be relieved in sickness or poverty; for the parish officers are so cruel and insolent, that it were better to starve than apply to them (meaning parish officers) for relief. G. (meaning the said supposed Gentleman) Did they (meaning parish officers) or the 'squire, or the parson, or all together, compel you (meaning the said supposed Farmer, and

the several persons composing such club) to form this society? F. (meaning the said supposed Farmer) Oh! no; we (meaning the said club) could not be compelled, we (meaning the said club) formed it by our own choice. G. (meaning the said supposed Gentleman) You (meaning the said club) did right; but have you (meaning the said club) not some head or president of your club? F. (meaning the said supposed Farmer) The master for each night is chosen by all the company present the week before. G. (meaning the said supposed Gentleman) Does he (meaning such master) make laws to bind you (meaning the said club) in case of ill temper or misbehaviour? F. (meaning the said supposed Farmer) He (meaning such master) make laws! he (meaning the said master) bind us! (meaning the said club) no, we (meaning the said club) have all agreed to a set of certain rules, which are signed by every new comer, and were written in a strange hand by young Spelman, the lawyer's clerk, whose uncle is a member. G. (meaning the said supposed Gentleman) What should you (meaning the said club) do if any one member were to insist on becoming perpetual master, and on altering your (meaning the said club's) rules at his (meaning such one member's) arbitrary will and pleasure? F. (meaning the said supposed Farmer) We (meaning the said club) should expel him, (meaning such one member). G. (meaning the said supposed Gentleman) What if he (meaning such one member) were to bring a serjeant's guard when the militia are quartered in your neighbourhood, and insist upon your (meaning such club's) obeying him, (meaning such one member)? F. (meaning the said supposed Farmer) We (meaning such club) should resist if we (meaning the said club) could; if not, the society would be broken up. G. (meaning the said supposed Gentleman) Suppose that with his (meaning such one member's) serjeant's guard he (meaning such one member) were to take the money out of the box, or out of your (meaning the members of the club's) pockets. F. (meaning the said supposed Farmer) Would not that be a robbery? G. (meaning the said supposed Gentleman) I (meaning the said supposed Gentleman) am seeking information from you, (meaning the said supposed Farmer) how should you (meaning the said club) act on such an occasion? F. (meaning the said supposed Farmer) We (meaning the said club) should submit perhaps at that time, but should afterwards try to apprehend the robbers. G. (meaning the said supposed Gentleman) What if you (meaning the said club) could not apprehend them? F. (meaning the said supposed Farmer) We (meaning the said club) might kill them, I (meaning the said supposed Farmer) should think; and if the king (meaning our said lord the king) would not pardon us, (meaning the said club) God would. G. (meaning the said supposed Gentleman) How could you (meaning the said club) either ap-

prehend them, (meaning the said robbers) or if they (meaning the said robbers) resisted, kill them, without a sufficient force in your (meaning the said club's) own hands? F. (meaning the said supposed Farmer) Oh, we (meaning the said club) are all good players at single stick, and each of us (meaning of the said club) has a stout cudgel or quarter-staff in the corner of his room. G. (meaning the said supposed Gentleman) Suppose that a few of the club were to domineer over the rest, and insist upon making laws for them? (meaning the rest of the said club.) F. (meaning the said supposed Farmer) we (meaning the rest of the said club) must take the same course, except that it would be easier to restrain one man than a number; but we (meaning the rest of the said club) should be the majority with justice on our side. G. (meaning the said supposed Gentleman) A word or two on another head; some of you, (meaning the said club) I (meaning the said supposed Gentleman) presume, are no great accountants. F. (meaning the said supposed Farmer) Few of us (meaning the said club) understand accounts; but we (meaning the said club) trust old Lilly the schoolmaster, whom we (meaning the said club) believe to be an honest man; and he keeps the key of our (meaning the said club's) box. G. (meaning the said supposed Gentleman) If your (meaning the said club's) money should in time amount to a large sum, it might not perhaps be safe to keep it (meaning such large sum) at his (meaning Lilly's) house, or in any private house? F. (meaning the said supposed Farmer) Where else should we (meaning the said club) keep it (meaning such large sum)? G. (meaning the said supposed Gentleman) You (meaning the said club) might choose to put it (meaning such money) into the funds, or to lend it the squire, who has lost so much lately at Newmarket, taking his bond, or some of his fields, as your (meaning the said club's) security for payment with interest. F. (meaning the said supposed Farmer) We (meaning the said club) must in that case confide in young Spelman, who will soon set up for himself, and, if a lawyer can be honest, will be an honest lawyer. G. (meaning the said supposed Gentleman) What power do you (meaning the said club) give to Lilly; or should you (meaning the said club) give to Spelman in the case supposed? F. (meaning the said supposed Farmer) No power: we (meaning the said club) should give them both (meaning Lilly and Spelman) a due allowance for their trouble, and should expect a faithful account of all they had done for us (meaning the said club). G. (meaning the said supposed Gentleman) Honest men may change their nature. What if both or either of them (meaning Lilly and Spelman) were to deceive you? (meaning the said club.) F. (meaning the said supposed Farmer) We (meaning the said club) should remove them, (meaning Lilly

and Spelman) put our (meaning the said club's) trust in better men, and try to repair our (meaning the said club's) loss. G. (meaning the said supposed Gentleman) Did it never occur to you (meaning the said supposed Farmer) that every state or nation was only a great club? F. (meaning the said supposed Farmer) Nothing ever occurred to me (meaning himself, the said supposed Farmer) on the subject, for I (meaning himself, the said supposed Farmer) never thought about it. G. (meaning the said supposed Gentleman) Though you (meaning the said supposed Farmer) never thought before on the subject, yet you (meaning the said supposed Farmer) may be able to tell me (meaning the said supposed Gentleman) why you (meaning the said supposed Farmer) suppose men to have assembled, and to have formed nations, communities or states, which all mean the same thing. F. (meaning the said supposed Farmer) In order, I (meaning himself, the said supposed Farmer) should imagine, to be as happy as they (meaning men) can, while they (meaning men) live. G. (meaning the said supposed Gentleman) By happy, do you (meaning the said supposed Farmer) mean merry only? F. (meaning the said supposed Farmer.) To be as merry as they (meaning men) can, without hurting themselves or their neighbours, but chiefly to secure themselves from danger, and to relieve their wants. G. (meaning the said supposed Gentleman) Do you (meaning the said supposed Farmer) believe that any king or emperor compelled them (meaning men) so to associate? F. (meaning the said supposed Farmer) How could one man compel a multitude? A king, or an emperor, I (meaning himself, the said supposed Farmer) presume, is not born with an hundred hands. G. (meaning the said supposed Gentleman) When a prince of the blood shall in any country be so distinguished by nature, I (meaning himself, the said supposed Gentleman) shall then, and then only, conceive him (meaning such prince) to be a greater man than you (meaning the said supposed Farmer); but might not an army with a king or general at their head, have compelled them (meaning men) to assemble? F. (meaning the said supposed Farmer) Yes; but the army must have been formed by their own choice; one man, or a few, can never govern many without their consent. G. (meaning the said supposed Gentleman) Suppose, however, that a multitude of men, assembled in a town or city, were to choose a king or governor, might they (meaning such multitude) not give him (meaning such king or governor) high power and authority? F. (meaning the said supposed Farmer) To be sure; but they (meaning such multitude) would never be so mad, I (meaning himself, the said supposed Farmer) hope, as to give him (meaning such king or governor) a power of making their (meaning such multitude's) laws. G. (mean-

ing the said supposed Gentleman) Who else should make them? (meaning laws.) F. (meaning the said supposed Farmer) The whole nation or people. G. (meaning the said supposed Gentleman) What if they (meaning nation or people) disagreed? F. (meaning the said supposed Farmer) The opinion of the greater number, as in our village-clubs, must be taken, and prevail. G. (meaning the said supposed Gentleman) What could be done, if the society were so large that all could not meet in the same place? F. (meaning the said supposed Farmer) A greater number must choose a less. G. (meaning the said supposed Gentleman) Who should be the choosers? F. (meaning the said supposed Farmer) All those who are not upon the parish. In our club (meaning the said club) if a man asks relief of the overseer, he ceases to be one of us, (meaning the said club) because he (meaning the said man) must depend on the overseer. G. (meaning the said supposed Gentleman) Could not a few men, one in seven for instance, chuse the assembly of law-makers, as well as a larger number? F. (meaning the said supposed Farmer) As conveniently perhaps; but I (meaning the said supposed Farmer) would not suffer any man to chuse another, who was to make laws, by which my (meaning his the said supposed Farmer's) money, or my (meaning his the said supposed Farmer's) life, might be taken from me (meaning the said supposed Farmer). G. (meaning the said supposed Gentleman) Have you (meaning the said supposed Farmer) a freehold in any county, of forty shillings a year? F. (meaning the said supposed Farmer) I (meaning the said supposed Farmer) have nothing in the world but my (meaning his the said supposed Farmer's) cattle, implements of husbandry, and household goods, together with my (meaning his the said supposed Farmer's) farm, for which I (meaning himself the said supposed Farmer) pay a fixed rent to the squire. G. (meaning the said supposed Gentleman) Have you (meaning the said supposed Farmer) a vote in any city or borough? F. (meaning the said supposed Farmer) I (meaning himself the said supposed Farmer) have no vote at all, but am able by my (meaning his the said supposed Farmer's) honest labour to support my (meaning his the said supposed Farmer's) wife and four children; and whilst I (meaning himself the said supposed Farmer) act honestly, I (meaning himself the said supposed Farmer) may defy the laws. G. (meaning the said supposed Gentleman) Can you (meaning the said supposed Farmer) be ignorant that the parliament, to which members are sent by this county, and by the next market town, have power to make new laws, by which you (meaning the said supposed Farmer) and your (meaning the said supposed Farmer's) family may be stripped of your (meaning his the said supposed Farmer's and his family's) goods, thrown into prison, and

even deprived of life? F. (meaning the said supposed Farmer) A dreadful power! I (meaning himself the said supposed Farmer) never made enquiries, having business of my (meaning his the said supposed Farmer's) own concerning the business of parliament, but imagined that the laws had been fixed for many hundred years. G. (meaning the said supposed Gentleman) The common laws to which you (meaning the said supposed Farmer) refer, are equal, just, and humane; but the king (meaning our said lord the king) and parliament (meaning the parliament of this realm) may alter them (meaning the laws of this realm) when they (meaning our said lord the king, and the said parliament) please. F. (meaning the said supposed Farmer) The king ought therefore to be a good man, and the parliament to consist of men equally good. G. (meaning the said supposed Gentleman) The king alone can do no harm; but who must judge the goodness of parliament men? F. (meaning the said supposed Farmer) All those whose property, freedom, and lives, may be affected by their (meaning the parliament men's) laws. G. (meaning the said supposed Gentleman) Yet six men in seven who inhabit this kingdom (meaning the kingdom of Great Britain) have like you (meaning the said supposed Farmer) no votes (meaning votes in the election of members of the House of Commons of this kingdom) and the petition which I (meaning the said supposed Gentleman) desired you (meaning the said supposed Farmer) to sign, has nothing for its (meaning such petition's) object, but the restoration of you all, (meaning the six men in seven who inhabit this kingdom, having no votes as aforesaid) to the right of chusing those law-makers, by whom your (meaning the last mentioned men's) money, or your (meaning the last mentioned men's) lives may be taken from you (meaning the said last mentioned men). Attend, while I (meaning the said supposed Gentleman) read it (meaning the said petition) distinctly. F. (meaning the said supposed Farmer) Give me (meaning the said supposed Farmer) your (meaning the said supposed Gentleman's) pen: I (meaning the said supposed Farmer) never wrote my (meaning his the said supposed Farmer's) name, ill as it may be written, with greater eagerness. G. (meaning the said supposed Gentleman) I (meaning the said supposed Gentleman) applaud you (meaning the said supposed Farmer) and trust that your (meaning the said supposed Farmer's) example will be followed by millions. Another word before we (meaning the said supposed Gentleman, and the said supposed Farmer) part—Recollect your (meaning the said supposed Farmer's) opinion about your club in the village (meaning the said club); and tell me (meaning the said supposed Gentleman) what ought to be the consequence, if the king (meaning our said lord the king) alone were to insist on making laws, or on altering them

at his (meaning our said lord the king's) will and pleasure. F. (meaning the said supposed Farmer) He (meaning our said lord the king) too must be expelled. G. (meaning the said supposed Gentleman) Oh! but think of his (meaning our said lord the king's) standing army, and of the militia, which now are his (meaning our said lord the king's) in substance, though ours (meaning the subjects of this realm) in form. F. (meaning the said supposed Farmer) If he (meaning our said lord the king) were to employ that force against the nation (meaning the subjects of this realm) they (meaning the said nation) would, and ought to resist him (meaning our said lord the king) or the state would cease to be a state. G. (meaning the said supposed Gentleman) What if the great accountants and great lawyers, the Lillys and Spelmans of the nation (meaning this kingdom) were to abuse their (meaning the said great accountants, and great lawyers) trust, and cruelly injure instead of faithfully serving the public? F. (meaning the said supposed Farmer) We (meaning the subjects of this realm) must request the king (meaning our said lord the king) to remove them (meaning the said great accountants and great lawyers) and make trial of others; but none should implicitly be trusted. G. (meaning the said supposed Gentleman) But what if a few great lords, or wealthy men, were to keep the king (meaning our said lord the king) himself in subjection, yet exert his (meaning our said lord the king's) force, lavish his (meaning our said lord the king's) treasure, and misuse his (meaning our said lord the king's) name, so as to domineer over the people (meaning the subjects of this realm) and manage the parliament? (meaning the parliament of this realm). F. (meaning the said supposed Farmer) We (meaning the subjects of this realm) must fight for the king (meaning our said lord the king) and ourselves (meaning the said subjects of this realm). G. (meaning the said supposed Gentleman) You (meaning the said supposed Farmer) talk of fighting, as if you (meaning the said supposed Farmer) were speaking of some rustic engagement at a wake; but your (meaning the subjects of this realm) quarter-staffs would avail you (meaning the said subjects) little against bayonets. F. (meaning the said supposed Farmer) We (meaning the said subjects) might easily provide ourselves (meaning the said subjects) with better arms. G. (meaning the said supposed Gentleman) Not so easily: when the moment of resistance came, you (meaning the said subjects) would be deprived of all arms, and those who should furnish you (meaning the said subjects) with them, (meaning arms) or exhort you (meaning the said subjects) to take them (meaning arms) up, would be called traitors, and probably put to death. F. (meaning the said supposed Farmer) We (meaning the said subjects) ought always therefore to be ready, and keep each of us (meaning such

subjects) a strong firelock in the corner of his (meaning such subject's) bed-room. G. (meaning the said supposed Gentleman) That would be legal, as well as rational. Are you, (meaning the said supposed Farmer) my honest friend, provided with a musket? F. (meaning the said supposed Farmer) I (meaning the said supposed Farmer) will contribute no more to the club, (meaning the club above mentioned) and purchase a firelock with my (meaning the said supposed Farmer's) savings. G. (meaning the said supposed Gentleman) It is not necessary. I (meaning the said supposed Gentleman) have two, (meaning two firelocks) and will make you (meaning the said supposed Farmer) a present of one (meaning one firelock) with complete accoutrements. F. (meaning the said supposed Farmer) I (meaning the said supposed Farmer) accept it (meaning the said last mentioned firelock) thankfully, and will converse with you (meaning the said supposed Gentleman) at your (meaning the said supposed Gentleman's) leisure on other subjects of this kind. G. (meaning the said supposed Gentleman) In the mean while, spend an hour every morning in the next fortnight in learning to prime and load expeditiously, and to fire and charge with bayonet firmly and regularly: I (meaning the said supposed Gentleman) say every morning, because if you (meaning the said supposed Farmer) exercise too late in the evening, you (meaning the said supposed Farmer) may fall into some of the legal snares which have been spread for you by those gentlemen, who would rather secure game for their table, than liberty for the nation (meaning this realm). F. (meaning the said supposed Farmer) Some of my (meaning his, the said supposed Farmer's) neighbours, who have served in the militia (meaning the militia of this realm) will readily teach me, (meaning the said supposed Farmer); and perhaps the whole village may be persuaded to procure arms and learn their exercise. G. (meaning the said supposed Gentleman) It cannot be expected that the villagers should purchase arms; but they (meaning such villagers) might easily be supplied if the gentry of the nation (meaning this realm) would spare a little from their (meaning such gentry's) vices and luxury. F. (meaning the said supposed Farmer) May they (meaning such gentry) turn to some sense of honour and virtue! G. (meaning the said supposed Gentleman) Farewell at present, and remember that a free state is only a more numerous and more powerful club, and that he only is a free man, who is member of such a state. F. (meaning the said supposed Farmer) Good morning, Sir, you (meaning the said supposed Gentleman) have made me (meaning the said supposed Farmer) wiser and better than I (meaning himself the said supposed Farmer) was yesterday; and yet methinks I (meaning himself the said supposed Farmer) had some knowledge in my (meaning

the said supposed Farmer's) own mind of this great subject, and have been a politician all my (meaning the said supposed Farmer's) life, without perceiving it.—In contempt of our said lord the king and his laws, to the evil example of all others in the like case offending, and against the peace of our said lord the king, his crown, and dignity.

[It was laid in a second count, the same as the former, only omitting the innuendos.]

JURY.

John Nicholls, of Chelmarsh, esq.
 William Pemberton, of Walford, esq.
 Charles Walcott, of Bitterley, esq.
 Francis Lloyd, of Berghill, esq.
 Thomas Ottley, of Pitchford, esq.
 Joshua Blakeway, of Lythwood, esq.
 Richard Jones, of Riston, esq.
 John Hill, of Prees, esq.
 • Edward Williams, of Norton, esq.
 Thomas Kinnersley, of Leighton, esq.
 Thomas Eyton, of Wellington, esq.
 John Smitheman, of Buildwas, esq.

Counsel for the Crown.—Mr. Bearcroft, Mr. Cowper, Mr. Leycester, Mr. Bower, Mr. Manley, Mr. Richards.

Solicitor.—Mr. William Jones, of Ruthin.

Counsel for the Defendant.—The Hon. Thomas Erskine, Mr. Corbett, the Hon. Thomas Broderick, Mr. Abbot.

Solicitor.—Mr. Lewis Hughes, of St. Asaph.

The Indictment was opened by Mr. Richards.

Mr. Bearcroft. May it please your lordship, and gentlemen of the jury; It falls to my lot to appear as counsel for this prosecution, which brings forward a case, I perceive, of considerable expectation.—I shall be careful however not to introduce any improper warmth upon the occasion; and I heartily hope that you are perfectly free from any thing of the kind. All I shall desire of you will be, to attend to, and to understand this charge, and the question that you are to determine; and then to decide like men of honour, good subjects, and men of sense, according to the evidence.

Gentlemen, how this prosecution was instituted, and by whom, is a matter that I am utterly unacquainted with, except by report; and it is a matter that has nothing to do with the present business. I am to state to you, and to explain as well as I shall be able, the nature of the charge; I am to call the witnesses to prove it; you are to hear the other side, which is essential to all inquiries of justice; and then you will consider whether the defendant is, or is not, guilty of the offence whereof he stands accused.

Gentlemen, the charge is against the defendant, Mr. Shipley, dean of St. Asaph, a clergyman in possession of very large church preferments, that he has published a libel of and concerning the king and his government, and when I state it thus shortly, I venture to think that I have stated correctly, as a lawyer,

the substance and effect of the present indictment. It behoves me however to enter somewhat more deeply into it, and to shew why it is to be considered as a libel, and why it is fit to be punished. A libel is a crime against the public, as I have ever understood it, upon this simple principle—that it tends to a breach of the public peace, as a libel is always charged to do; if it can be stripped of that quality, and those whose proper duty it is shall pronounce that it does not in any degree tend to a breach of the public peace, there certainly is no criminal matter in it. On the other hand I contend, that if it does in the smallest degree tend to the breach of the public peace, that then it is a libel punishable by way of indictment.

Gentlemen, the present libel is a publication of considerable length—it is addressed to the Multitude—by which I am sure I shall not have justice done me, if I am supposed to use it as a term of contempt—I mean no such thing, I am as clearly of opinion as the rev. dean who has published this, that the multitude in a free country are justly respectable; the meaning of my observation that it is addressed to the multitude is, that it is therefore the more likely to produce that which I consider as the essence, the foundation of criminality in a libel, that is to say, to break the public peace.

Gentlemen, the manner of this publication is conceived in a Dialogue between a Gentleman and a Farmer; and I think I may fairly remark, that even by the very first lines which are used in it, and put in the mouth of the Farmer, very naturally and in character, it will appear, that there was no necessity, in these times, for this application to men of that description.

Gentlemen, the Dialogue seems to me to be supposed to begin upon occasion of an application very frequent on all sides; for if there were no sides, and no parties, nothing of this sort, I am satisfied, would ever appear. Applying to such a character as an honest Farmer to sign a certain petition, a petition which must undoubtedly be supposed to state certain, and one may conceive what kind of particular, grievances. Upon that application, the first words in the Dialogue in the mouth of the Farmer, are, "Why should humble men like me sign, or set marks to petitions of this nature? It is better for us farmers to mind our husbandry, and leave what we cannot comprehend, to the king and parliament." Sound sense and good doctrine this in the mouth of the Farmer: it would have been very well if he had been left undisturbed in these sentiments, by those, whose business it is, from their function, to preach far different doctrine than what this pamphlet contains; whose text should be, "Fear God, and honour the King." Yet in this paper is to be found not a syllable of piety; and a doctrine opposite to that of "honour the king," is plainly inculcated. The Farmer stating his sense

and his feelings, and not seeming disposed to sign this petition, he is beset with several questions, which are calculated to intrap his understanding, and to persuade him that he is what he did not at all feel, or suspect himself to be—cheated of his birthright; and that he has no chance of recovering it, but by turning soldier, and learning the Prussian exercise; for he is advised, and all his brother freeholders are advised, every morning to spend an hour in learning the manual exercise, to learn to prime and load expeditiously, and to fire, and charge with the bayonet, firmly and regularly—All this you will find when the paper comes to be read—and to make themselves a match for the king's standing army, and the militia of this country, in substance, as it is alledged by this libel, his standing army, though in form ours. That doctrine you will find, I believe, in the very words that I have uttered, flatly and plainly averred in the course of this publication.

Gentlemen, for what is all this to be done?—I do not read the whole Dialogue to you, for that must necessarily be done in evidence, but I am stating to you as I really feel and understand it—the argument, the persuasion, and the end that is proposed by publishing and dispersing in English, and as it was intended, in Welsh, and delivering gratis, this Dialogue to the people of the neighbouring principality—the grievance suggested to this Farmer, who felt none, is this, that truly a false, an unjust, an unconstitutional, mode of representation takes place in this country—the suggestion is this, that every man of one and twenty in this country has a right to vote, in some shape or other, to send representatives to parliament; and this the learned and reverend divine asserts to be the constitution of England.

Gentlemen, we consist of many millions of people; and it would be a dreadful thing if it were the constitution of this country—not much improved too, if every man of that description was taught to load and prime quick, and to make use of a bayonet—picture to yourselves all the men of this populous kingdom that can write twenty-one, attending at elections, with a musket upon their shoulder, and a bayonet at their side; recollect that spirit of quarrel which perpetually attends every assembly of people on such occasions: then tell me whether any man of a good heart, or a sound head, can wish for such an event in this country. Does not every man that is entitled to that description lament to the bottom of his heart, that at this moment there is a country, near in situation and in interest, which wears an appearance too like this shocking picture? The grievance that is suggested by the Dialogue to exist in this country, is just what I have stated. It then goes on to argue in this way—How are you to restore your rights?—By being armed. And then it is observed, that it is the right of

a subject of this country to be armed—in one sense there is not the least doubt of it—it is the right of the people of this country, and that right alone is sufficient to defend themselves against a real attack upon their liberties—by the law of this country every man is entitled to be in possession of arms—I agree most perfectly with the best friends of the reverend defendant, that any attempt by law to disarm the people of this country, to take from them the power of defending themselves upon a proper occasion, is illegal and unconstitutional; and I would go as far as any man to exclaim against any such attempt—but, gentlemen, is it not enough for freemen, that they may have the arms in their houses, that according to their state and degree, and the fashion of the times, they may wear them if they please; but can he be a good subject, and wish well to the commonwealth, who advises almost every man in this country to become a soldier?

Gentlemen, I do not remind you how mischievous it would be to the arts and to agriculture, because that is not a question before you; but I say, the man who advises the subjects of this country to bear arms—for such is the effect of this Dialogue, and that with a view to reinstate themselves in the fancied right of every man voting for a representative in parliament, is guilty of a gross and a heinous libel; for it not only tends directly to the breach of the peace in some degree, which is enough to form a libel, but it is impossible but that you must see that it tends to tumults, seditions, and the most dreadful consequences. The thought, for it seems to me that there is hardly more than one, that pervades this Dialogue from the beginning to the end, seems to be comparing this country to a self instituted club—I will not wage war with great names and speculative politicians in their closets; it is asserted upon one of the leaves of this libel, that the doctrine promulgated by this Dialogue, is such as you may read in Locke and other great authorities upon government—I believe that is not so; but if it were, there is a wide difference between speculations and exhortations. If I am right in concluding that the doctrine, and the advice of this paper, is that every male of twenty-one has a right to vote in the choice of his representative—that the people of this country are robbed of this right, and that in consequence of this right being taken from them, they are robbed of their money, and so forth, which you will see is manifestly suggested in every page of this libel; then I say the advice to bear arms, as the only method to right themselves, is not only a libel, but one of the worst kind; for it approaches closely to the crime of high treason itself; since I am bold to state as a lawyer, that if any man advises a set of men to bear arms, to make an alteration in the state and government that obtains in this country, and shall so far succeed as to persuade these men

to take arms and banners, declaring that such is their object, both he and they, in point of law, as it has been solemnly determined, are guilty of the crime of high treason.

Gentlemen, if therefore the tendency of this Dialogue, be in any degree to persuade men to put themselves in a condition which leads to that, it not only is a libel, but a libel of the greatest magnitude.—I know not how this case is to be treated on the part of the defendant; it is, as I have said, a cause of warmth, and of expectation—I know my learned friend's abilities—I know his warmth: every thing that can by any possibility be said to catch your favour for his client, or that will have the appearance of argument, you will hear urged, I doubt not, with the utmost ability. With regard to myself, I have only this to say, I knew not of this prosecution—I knew nothing of the prosecutor, but in the shape of a client, putting a brief into my hands, to prosecute a person charged with a public offence; and it is my duty to do it.

Gentlemen, I will go the length to say, and I do not believe that I do the prosecutor any harm when I say it, because he has a right to enjoy his own opinion, if I had been asked the question, whether I would advise such a prosecution; I should have had no difficulty at once to say, it is not prudent—but if I had been asked the question as a lawyer—Is this a crime?—Is this a libel?—I charge you, Sir, tell me as a professor of the law, what is your opinion?—I declare upon my honour, that I should have felt myself forced to declare, and I should have declared, as far as my poor simple authority goes, that I not only think it a libel, but I think it a most enormous, and a most mischievous libel.

Gentlemen, I should have thus reasoned; I should have said, either this publication has no meaning at all—and that nobody would think, considering the learned publisher of it—or it has a very wicked and a bad meaning; it has that meaning which makes it a libel, that is to say, it means to reflect upon the king's government, to excite sedition and discontent among the people; it is impossible for any body to read it, but they must see that the subject matter really aimed at, and in many parts spoken of in plain terms, are the king and his government.

Gentlemen, upon these occasions it is not unfrequent—and my friend will do every thing, I dare say, on the other side—to enter into questions about the province of the jury. You will be directed by an authority much higher than mine, but I will venture to suggest, under the correction of that authority, which I am sure I shall obey implicitly, that the law of libels with respect to a jury is this—if the words want explanation, and a meaning is given to them by an averment in the record, saying that these words, naming them which you find in the libel, have this or that meaning, it is the incontestible pro-

vince of the jury—it is a province that nobody ought to invade, to decide whether they have that meaning—aye or no—and I believe it never yet was attempted by any judge to rob them of that jurisdiction. Another thing is necessary—the jury are to decide, whether the whole publication is concerning the matter and subject that it is averred to concern and relate to.—Now in this prosecution the libel is stated at length, it wants no explanation, except for form, that G. is for Gentleman, and F. for Farmer, all through the Dialogue.—But it is averred that this libel is published of, and concerning, our said lord the king, and the government of this realm.—Now I am free to admit, as I really believe, in my poor judgment, that it is the business of a jury to decide, whether this libel means to treat of, or to point at, and to make the subject of its discussion, our said lord the king, and the government of this realm.—That you are to decide upon.

Gentlemen, a word about that expression—the legal term always about the government, is 'of and concerning the king and his government;' for the government of this country, the executive part of it, is undoubtedly in the king. It is conceived, and the language of the law always is, that if there be any libel published, touching the government of this kingdom, as it is carried on by parliament, and in other shapes—I say that in point of law, that is a discourse touching the king and his government, because he is considered as part of the government, and the head of it: therefore when the phrase is made use of here, touching the king and the government of this realm; if you should be satisfied, upon reading this libel, that it is concerning the government, it follows of course that it is concerning the king and his government.

Gentlemen, I humbly conceive that this, therefore, is all that you have to do upon the present occasion—to consider whether the defendant published this concerning the government of this kingdom. I know not your connections, your wishes, or your party; but I am confident, sitting where you do, in the character of jurymen, you will lay aside all general opinions, and all inclinations whatever. You will not consider who is the prosecutor—you will not consider who is the defendant—you will not consider where this prosecution first originated—you will not consider, though I dare say we shall hear a great deal about it, how it happens not to have been tried before: but you will exercise your judgment on that which alone you are to try; namely, Whether the defendant is, or is not, guilty of this charge, upon the evidence that will be laid before you.

Gentlemen, I beg your pardon; I have by accident taken up more of your time than I intended—I shall leave the case with you, in confidence that you will treat it as men of sense, as men of honour, having regard for

your oaths; and I doubt not, that when this Dialogue comes to be read at length, it will be impossible for you not to see much more than is necessary to prove the defendant guilty, and consequently to make it your indispensable duty to pronounce him so by your verdict. In so doing, you subject him to that which the subjects of this kingdom are all liable to in cases of misdemeanor; the discretionary judgment of the superior court of criminal law of this country. That discretion will be exercised according to the circumstances. When a party is convicted, he has a right to apply to that court, and to say, this that is stated upon this indictment, in point of law, is not a libel: if so, he has the benefit of it. If there is no ground for that, he has a right to apply upon any circumstances that go to a mitigation of his offence; and it certainly will be considered in the discretion of the judges of that court.

I shall call the witnesses. You will give your particular attention to the publication undoubtedly before you decide this question; you will look at it, and read it by yourselves. If upon so reading you should be of opinion it is touching and concerning the king and his government, and that the defendant published it, your verdict will find the defendant guilty.

Gentlemen, I know not whether I shall have the opportunity of again addressing you—that depends upon the course that will be taken in this defence by the counsel on the other side—I shall not wantonly insist upon that right which I am of opinion at this day exists, if a prosecutor chooses to make use of it. If I find myself called upon by any arguments that are perfectly new, and that are not to be considered as an answer to this charge, then I shall feel myself called upon to say what I think I ought upon that occasion; at present, however, I sit down, hoping at least that I have got thus far—that you understand what it is you are to decide upon; and then I am confident you will determine as you ought.

EVIDENCE FOR THE PROSECUTION.

The Rev. Mr. *Edwards* sworn.

Examined by Mr. *Cowper*.

You are acquainted with Mr. Shipley?—Yes, I am.

Look at that pamphlet; whose hand-writing are those words, Gentleman and Farmer?—The dean's.

Have you seen that pamphlet before?—Yes, I have.

I mean that identical pamphlet?—I have.

From whom did you receive it?—From the dean of St. Asaph.

What request did he make to you?

Mr. *Erskine*. If it was in writing, you must not speak to it, but produce the letter.

Mr. *Edwards* produced the Letter.

There is no date of the year; when did you receive it?—In 1783.

The Letter was read, dated January the 24th.

“Dear *Edwards*, I will trouble you to get an edition of the inclosed Dialogue printed by Marsh, as soon as possible, with the following Advertisement annexed to it.—He may put a price of two-pence or three-pence, to bear expences.—I shall advertise it in the Chester paper on Tuesday, so I hope it will be printed by that day. Yours,

“WILLIAM DAVIES SHIPLEY.”

“Advertisement, to be put at the beginning.

“A short defence hath been thought necessary, against a violent and groundless attack upon the Flintshire Committee, for having testified their approbation of the following Dialogue, which hath been publicly branded with the most injurious epithets; and it is conceived, that the sure way to vindicate this little tract from so unjust a character will be as publicly to produce it.—The friends of the Revolution will instantly see, that it contains no principle which has not the support of the highest authority, as well as the clearest reason.

“If the doctrines which it slightly touches, in a manner suited to the nature of the Dialogue, be ‘seditious, treasonable, and diabolical,’ lord Somers was an incendiary, Locke a traitor, and the Convention-parliament a Pandemonium; but, if those names are the glory and boast of England, and if that convention secured our liberty and happiness, then the doctrines in question are not only just and rational, but constitutional and salutary: and the reproachful epithets belong wholly to the system of those, who so grossly misapplied them.”

Mr. *Cowper*. Did you deliver that pamphlet, according to the request contained in the dean of St. Asaph's letter, to Mr. Marsh?

Mr. *Edwards*. I did.

John Marsh called—(he demanded his expences, which Mr. William Jones, the prosecutor, undertook to pay.)

John Marsh sworn.

Examined by Mr. *Leycester*.

Look at that pamphlet; did you ever see it before?—Yes.

Who delivered it to you?—It was delivered to me by my father; I was out at the time it was delivered.

What is your father's name?—Richard.

Do you know where this (the original) was printed?—I cannot tell that.

Do you know where this other copy was printed?—It was printed at our office.

Was it printed from this?—Yes; I believe, from that very copy.

Did you ever see the dean of St. Asaph af-

terwards upon the subject, while the printing was going on?—I had struck off some before I saw the dean.

Did you see the dean afterwards?—Yes.

What passed?—I saw the dean at Mr. Edwards's, and related to him what happened, and that Mr. Jones came to buy some of the pamphlets, and put down mine and my father's name, the dean seemed quite surprised that any thing of that kind should pass.

Did the dean ever say any thing to you about the printing of it?—Not before, for I had never seen him.

But afterwards?—What reason had he to ask me?

But what did he say?—He said nothing, but only appeared quite surprised that any disturbance should be made about it, about Mr. Jones's coming to the shop.

Did he ever say any thing to you about printing and dispersing or selling them?—Mr. Edwards told me that.

Was the dean there?—No.

Mr. *Erskine*. You are in possession of that, from the letter of the dean. I do not mean to deny a syllable of that.

Dean of *St. Asaph*. I was at *St. Asaph*: I never saw him till the prosecutor had been with him.

Mr. *William Jones* sworn.

Examined by Mr. *Leycester*.

Where did you get that pamphlet, in your hand?—I bought it from Mr. Marsh, on the 8th of February, 1783.

He is a bookseller at Wrexham?—He is.

Cross-examined by Mr. *Erskine*.

You are the prosecutor of this indictment?—I am.

Did you, or any body for you, make any application to the Treasury for the prosecution of this?—I did.

What answer did you receive from the Treasury?—There was a written answer given.

Have you got it?—I have not.

What was the substance of it?—The substance of it was—

Mr. *Bearcroft*. Should we hear that answer, Mr. *Erskine*?

Mr. *Erskine*. In short, the Treasury would not prosecute; so you are now the prosecutor, and not the Treasury?—A. I am the prosecutor, and not the Treasury.

Because they refused to do it?—They did not do it; it was not an absolute refusal.

Mr. *Bearcroft*. What was it?—A. There was an application made by Mr. Fitzmaurice, as sheriff of the county: he had proceeded so far in the business himself, at least I proceeded by his direction, until he presented a memorial to the Treasury; and upon receiving the answer from the Treasury, Mr. Fitzmaurice declined the prosecution himself, and I have carried it on myself ever since.

Mr. *Bearcroft*. What was that answer?

Mr. Justice *Buller*. It is not evidence.

Mr. *Bearcroft*. All I had in view was, that nothing might be kept back from the jury.

[The Dialogue read, as follows:]

THE
PRINCIPLES OF GOVERNMENT,
IN A DIALOGUE

BETWEEN

A GENTLEMAN AND A FARMER.

F. Why should humble men, like me, sign or set marks to petitions of this nature? It is better for us farmers to mind our husbandry, and leave what we cannot comprehend to the king and parliament.

G. You can comprehend more than you imagine; and, as a *free member of a free state*, have higher things to mind than you may conceive.

F. If by *free* you mean *out of prison*, I hope to continue so, as long as I can pay my rent to the squire's bailiff; but what is meant by a *free state*?

G. Tell me first what is meant by a club in the village, of which I know you to be a member.

F. It is an assembly of men who meet after work every Saturday to be merry and happy for a few hours in the week.

G. Have you no other object but mirth?

F. Yes; we have a box, into which we contribute equally from our monthly or weekly savings, and out of which any members of the club are to be relieved in sickness or poverty; for the parish officers are so cruel and insolent, that it were better to starve than apply to them for relief.

G. Did they, or the squire, or the parson, or all together, compel you to form this society?

F. Oh! no—we could not be compelled; we formed it by our own choice.

G. You did right—But have you not some head or president of your club?

F. The master for each night is chosen by all the company present the week before.

G. Does he make laws to bind you in case of ill temper or misbehaviour?

F. He make laws! He bind us! No; we have all agreed to a set of equal rules, which are signed by every new comer, and were written in a strange hand by young *Spelman*, the lawyer's clerk, whose uncle is a member.

G. What should you do, if any one member were to insist on becoming *perpetual* master, and on altering your rules at his arbitrary will and pleasure?

F. We should expel him.

G. What, if he were to bring a serjeant's guard, when the militia are quartered in your neighbourhood, and insist upon your obeying him?

F. We should resist, if we could; if not, the society would be broken up.

G. Suppose that, with his serjeant's guard, he were to take the money out of the box, or out of your pockets?

F. Would not that be a robbery?

G. I am seeking information from you. How should you act on such an occasion?

F. We should submit, perhaps, at that time; but should afterwards try to apprehend the robbers.

G. What, if you could not apprehend them?

F. We might kill them, I should think; and, if the king would not pardon us, God would.

G. How could you either apprehend them, or, if they resisted, kill them, without a sufficient force in your own hands?

F. Oh! we are all good players at single-stick, and each of us has a stout cudgel or quarter-staff in the corner of his room.

G. Suppose that a few of the club were to domineer over the rest, and insist upon making laws for them——

F. We must take the same course; except that it would be easier to restrain one man, than a number; but we should be the majority with justice on our side.

G. A word or two on another head. Some of you, I presume, are no great accountants.

F. Few of us understand accounts; but we trust old *Lilly* the school-master, whom we believe to be an honest man; and he keeps the key of our box.

G. If your money should in time amount to a large sum, it might not perhaps be safe to keep it at his house, or in any private house.

F. Where else should we keep it?

G. You might chuse to put it into the funds, or to lend it the 'squire, who has lost so much lately at *Newmarket*, taking his bond or some of his fields as your security for payment with interest.

F. We must in that case confide in young *Spelman*, who will soon set up for himself, and, if a lawyer can be honest, will be an honest lawyer.

G. What power do you give to *Lilly*, or should you give to *Spelman* in the case supposed?

F. No power. We should give them both a due allowance for their trouble, and should expect a faithful account of all they had done for us.

G. Honest men may change their nature. What, if both or either of them were to deceive you?

F. We should remove them, put our trust in better men, and try to repair our loss.

G. Did it never occur to you, that every state or nation was only a great club?

F. Nothing ever occurred to me on the subject; for I never thought about it.

G. Though you never thought before on the subject, yet you may be able to tell me,

why you suppose men to have assembled, and to have formed nations, communities, or states, which all mean the same thing.

F. In order, I should imagine, to be as happy as they can, while they live.

G. By *happy* do you mean *merry* only?

F. To be as merry as they can without hurting themselves or their neighbours, but chiefly to secure themselves from danger, and to relieve their wants.

G. Do you believe, that any king or emperor compelled them so to associate?

F. How could one man compel a multitude? A king or an emperor, I presume, is not born with a hundred hands.

G. When a prince of the blood shall in any country be so distinguished by nature, I shall then, and then only, conceive him to be a greater man than you. But might not an army, with a king or general at their head, have compelled them to assemble?

F. Yes; but the army must have been formed by their own choice. One man or a few can never govern many without their consent.

G. Suppose, however, that a multitude of men, assembled in a town or city, were to chuse a king or governor, might they not give him high power and authority?

F. To be sure; but they would never be so mad, I hope, as to give him a power of making their *laws*.

G. Who else should make them?

F. The *whole* nation or people.

G. What, if they disagreed?

F. The opinion of the *greater number*, as in our village-clubs, must be taken and prevail.

G. What could be done, if the society were so large, that all could not meet in the same place?

F. A greater number must chuse a less.

G. Who should be the chusers?

F. All, who are not *upon the parish*. In our club, if a man asks relief of the overseer, he ceases to be one of us, because he must depend on the overseer.

G. Could not a few men, one in seven for instance, chuse the assembly of law-makers as well as a larger number?

F. As conveniently, perhaps; but I would not suffer any man to chuse another, who was to make laws, by which my money or my life might be taken from me.

G. Have you a *freehold* in any county, of forty shillings a year?

F. I have nothing in the world but my cattle, implements of husbandry, and household goods, together with my farm, for which I pay a fixed rent to the 'squire.

G. Have you a vote in any city or borough?

F. I have no vote at all; but am able by my honest labour to support my wife and four children; and, whilst I act honestly, I may defy the laws.

G. Can you be ignorant, that the parliament, to which members are sent by this

county, and by the next market-town, have power to make new laws, by which you and your family may be stripped of your goods, thrown into prison, and even deprived of life?

F. A dreadful power! I never made inquiries, having business of my own, concerning the business of parliament, but imagined, that the laws had been fixed for many hundred years.

G. The common laws, to which you refer, are equal, just, and humane; but the king and parliament may alter them, when they please.

F. The king ought therefore to be a good man, and the parliament to consist of men equally good.

G. The king alone can do no harm; but who must judge the goodness of parliament-men?

F. All those whose property, freedom, and lives may be affected by their laws.

G. Yet six men in seven, who inhabit this kingdom, have, like you, no votes; and the petition which I desired you to sign, has nothing for its object, but the restoration of you all to the right of chusing those law-makers by whom your money or your lives may be taken from you. Attend, while I read it distinctly.

F. Give me your pen—I never wrote my name, ill as it may be written, with greater eagerness.

G. I applaud you, and trust, that your example will be followed by millions. Another word before we part. Recollect your opinion about your club in the village, and tell me what ought to be the consequence, if the king alone were to insist on making laws, or on altering them at his will and pleasure.

F. He too must be expelled.

G. Oh! but think of his standing army, and of the militia, which now are his in substance, though ours in form.

F. If he were to employ that force against the nation, they would and ought to resist him, or the state would cease to be a state.

G. What, if the great accountants and great lawyers, the *Lillys* and *Spelmans*, of the nation were to abuse their trust, and cruelly injure, instead of faithfully serving, the public?

F. We must request the king to remove them, and make trial of others, but none should implicitly be trusted.

G. But what, if a few great lords or wealthy men were to keep the king himself in subjection, yet exert his force, lavish his treasure, and misuse his name, so as to domineer over the people and manage the parliament?

F. We must fight for the king and ourselves.

G. You talk of fighting, as if you were speaking of some rustic engagement at a wake: but your quarter-staffs would avail you little against bayonets.

F. We might easily provide ourselves with better arms.

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G. Not so easily; when the moment of resistance came, you would be deprived of all arms; and those who should furnish you with them, or exhort you to take them up, would be called traitors, and probably put to death.

F. We ought always, therefore, to be ready; and keep each of us a strong firelock in the corner of his bed-room.

G. That would be legal as well as rational. Are you, my honest friend, provided with a musket?

F. I will contribute no more to the club, and purchase a firelock with my savings.

G. It is not necessary—I have two, and will make you a present of one with complete accoutrements.

F. I accept it thankfully, and will converse with you at your leisure on other subjects of this kind.

G. In the mean while, spend an hour every morning in the next fortnight in learning to prime and load expeditiously, and to fire and charge with bayonet firmly and regularly. I say every morning; because, if you exercise too late in the evening, you may fall into some of the legal snares, which have been spread for you by those gentlemen, who would rather secure game for their table, than liberty for the nation.

F. Some of my neighbours, who have served in the militia, will readily teach me; and perhaps, the whole village may be persuaded to procure arms, and learn their exercise.

G. It cannot be expected, that the villagers should purchase arms; but they might easily be supplied, if the gentry of the nation would spare a little from their vices and luxury.

F. May they turn to some sense of honour and virtue!

G. Farewell, at present; and remember, "that a free state is only a more numerous and more powerful club, and that he only is a free man, who is member of such a state."

F. Good morning, Sir! You have made me wiser and better than I was yesterday; and yet, methinks, I had some knowledge in my own mind of this great subject, and have been a politician all my life without perceiving it.

End of the Evidence for the Prosecution.

The Hon. *Thomas Erskine* :

Gentlemen of the Jury; My learned and respectable friend, (for such upon this as upon all other occasions he has approved himself) having informed the Court that he means to call no other witnesses to support the prosecution, you are now in possession of the whole of the evidence, on which the prosecutor has ventured to charge my reverend client, the dean of St. Asaph, with a seditious purpose to excite disloyalty and disaffection to the person of his king, and an armed rebellion against the state and constitution of

nothing more
to publish this
nothing sedi-
advertisement prefixed to it,
against all sedi-

therefore, which I feel
and malevolent an accu-
to repress the feeling ex-
and injustice, within those
may leave my faculties their
unclouded operation; for I so-
to you, that if he had been in-
of our holy religion, only
that the world was made by
Mighty Author, my astonishment could
have been greater than it is at this mo-
ment, to see the little book, which I hold in
my hand, presented by a grand jury of Eng-
lish subjects, as a libel upon the government
of England.—Every sentiment contained in
it (if the interpretations of words are to be
settled, not according to fancy, but by the
common rules of language) is to be found in
the brightest pages of English literature, and
in the most sacred volumes of English laws:
if any one sentence from the beginning to
the end of it be seditious or libellous, the
Bill of Rights (to use the language of the ad-
vertisement prefixed to it) was a seditious
libel;—the Revolution was a wicked rebel-
lion;—the existing government is a traitorous
conspiracy against the hereditary monarchy
of England;—and our gracious sovereign,
whose title, I am persuaded, we are all of us
prepared to defend with our blood, is an
usurper of the crown of these kingdoms.

That all these absurd, preposterous, and
treasonable conclusions, follow necessarily
and unavoidably from a conclusion upon this
evidence,—that this Dialogue is a libel,—fol-
lowing the example of my learned friend,
who has pledged his personal veracity in sup-
port of his sentiments, I assert, upon my ho-
nour, to be my unaltered, and I believe I
may say, unalterable opinion, formed upon
the most mature deliberation; and I choose
to place that opinion in the very front of my
address to you, that you may not, in the
course of it, mistake the energies of truth
and freedom for the zeal of professional
duty.

This declaration of my own sentiments,
even if my friend had not set me the exam-
ple by giving you his, I should have consid-
ered to be my duty in this cause; for al-
though in ordinary cases, where the private
right of the party accused is alone in discus-
sion, and no general consequences can follow
from the decision, the advocate and the pri-
vate man ought in sound discretion to be
kept asunder; yet there are occasions, when
such separation would be treachery and
meanness.—In a case where the dearest
rights of society are involved in the resistance
of a prosecution,—where the party accused is
(as in this instance) but a mere name,—where

the whole community is wounded through
his sides,—and where the conviction of the pri-
vate individual is the subversion or surrender
of public privileges, the advocate has a more
extensive charge:—the duty of the patriot
citizen then mixes itself with his obligation
to his client, and he disgraces himself, disho-
nours his profession, and betrays his country,
if he does not step forth in his personal cha-
racter, and vindicate the rights of all his fel-
low citizens, which are attacked through the
medium of the man he is defending. Gen-
tlemen, I do not mean to shrink from that
responsibility upon this occasion; I desire to
be considered the fellow criminal of the de-
fendant, if by your verdict he should be
found one, by publishing in advised speaking
(which is substantially equal in guilt to the
publication that he is accused of before you),
my hearty approbation of every sentiment
contained in this little book; promising here,
in the face of the world, to publish them
upon every suitable occasion, amongst that
part of the community within the reach of
my precept, influence, and example. If there
be any more prosecutors of this denomina-
tion abroad among us, they know how to
take advantage of these declarations.*

Gentlemen, when I reflect upon the danger
which has often attended the liberty of the
press in former times, from the arbitrary pro-
ceedings of abject, unprincipled, and depen-
dent judges, raised to their situations without
abilities or worth, in proportion to their ser-
vility to power, I cannot help congratulating
the public that you are to try this indictment
with the assistance of the learned judge be-
fore you;—much too instructed in the laws
of this land to mislead you by mistake, and
too conscientious to misinstruct you by de-
sign.

The days indeed I hope are now past, when
judges and jurymen upon state trials, were
constantly pulling in different directions; the
Court endeavouring to annihilate altogether
the province of the jury, and the jury in re-
turn listening with disgust, jealousy, and
alienation, to the directions of the Court.—
Now they may be expected to be tried with
that harmony which is the beauty of our
legal constitution:—the jury preserving their
independence in judging of the intention,
which is the essence of every crime: but
listening to the opinion of the judge upon
the evidence, and upon the law, with that
respect and attention, which dignity, learn-
ing, and honest intention in a magistrate
must and ought always to carry along with
them.

Having received my earliest information in
my profession from the learned judge him-

* "It will be seen hereafter, that when the Dia-
logue was brought before the Court, by Mr. Erskine's
motion to arrest the judgment, the Court was obliged
to declare that it contained no illegal matter." Note
of the Editor of "Erskine's Speeches."

self,* and having daily occasion to observe his able administration of justice, you may believe that I anticipate nothing from the bench unfavourable to innocence; and I have experienced his regard in too many instances, not to be sure of every indulgence that is personal to myself.

These considerations enable me with more freedom to make my address to you upon the merits of this prosecution, in the issue of which your own general rights, as members of a free state, are not less involved, than the private rights of the individual I am defending.

Gentlemen, my reverend friend stands before you under circumstances new and extraordinary, and I might add, harsh and cruel; he is not to be tried in the forum *where he lives*, according to the wise and just provisions of our ancient laws;—he is not to be tried by the vicinage, who, from their knowledge of general character and conduct, were held by our wise and humane ancestors to be the fittest, or rather the only judges in criminal cases:—he has been deprived of that privilege by the arts of the prosecutor, and is called before *you*, who live in *another* part of the country, and who, except by vague reputation, are utter strangers to him.

But the prosecution itself, abandoned by the public, and left, as you cannot but know it is, in the hands of an individual, is a circumstance not less extraordinary and unjust,—unless as it palpably refutes the truth of the accusation.—For, if this little book be a libel at all, it is a libel upon *the state and constitution of the nation*, and not upon any person under the protection of its laws: it attacks the character of no man in this or any other country; and therefore no man is *individually or personally* injured or offended by it. If it contain matter dangerous or offensive, *the state alone* can be endangered or offended.

And are we then reduced to that miserable condition in this country, that, if discontent and sedition be publicly exciting amongst the people, the charge of suppressing it devolves upon Mr. Jones? My learned friend, if he would have you believe that the Dialogue is seditious and dangerous, must be driven to acknowledge, that government has grossly neglected its trust; for if, as he says, it has an evident tendency in critical times to stir up alarming commotions, and to procure a reform in the representation of the people, by violence and force of arms;—and if, as he likewise says, a public prosecution is a proceeding calculated to prevent these probable consequences; what excuse is he prepared to make for the government, which, when, according to the evidence of his own witness, an application was made to it for that express purpose, positively, and on deliberation, re-

* Mr. Erskine was for some time one of the judge's pupils as a special pleader, before he was raised to the bench.

fused to prosecute?—What will he say for one learned gentleman,* who dead is lamented, and for another,† who living is honoured by the whole profession; both of whom, on the appearance of this Dialogue, were charged with the duty of prosecuting all offenders against the state, yet who not only read it day after day in pamphlets and newspapers, without stirring against the publishers, but who, on receiving it from the lords of the treasury by official reference, opposed a prosecution at the national expence?—What will he say of the successors of those gentlemen, who hold their offices at this hour, and who have ratified the opinions of their predecessors by their own conduct?—And what, lastly, will he say in vindication of majesty itself, to my knowledge not unacquainted with the subject, yet from whence no orders issued to the inferior servants of the state?

So that, after Mr. Fitzmaurice, representing this Dialogue as big with ruin to the public, has been laughed at by the king's ministers at the treasury;—by the king himself, of whom he had an audience;—and by those appointed by his wisdom to conduct all prosecutions; you are called upon to believe that it is a libel dangerous and destructive;—and that while the state, neglected by those who are charged with its preservation, is tottering to its centre, the falling constitution of this ancient nation is happily supported by Mr. Jones, who, like another Atlas, bears it upon his shoulders.‡

Mr. Jones then, who sits before you, is the only man in England who accuses the defendant. He alone takes upon himself the important office of dictating to his majesty,—of reprobating the proceedings of his ministers,—and of superseding his Attorney and Solicitor General;—and shall I insult your understandings by supposing that this accusation proceeds from pure patriotism and public spirit in him, *or more properly in that other gentleman, whose deputy upon this occasion he is well known to be?* Whether such a supposition would not indeed be an insult, his conduct as a public prosecutor will best illustrate.

He originally put the indictment in a regular course of trial in the very neighbourhood, where its operations must have been most felt, and where, if criminal in its objects, the criminality must have been the most obvious.—A jury of that vicinage was assembled to try it, and the dean having required my assistance on the occasion, I travelled 200 miles with great inconvenience to

* Mr. Wallace, then Attorney General.

† Mr. Lee, then Solicitor, afterwards Attorney General.

‡ “Mr. Jones, the present [1813] marshal of the King's-bench, became entangled in the prosecution as the attorney of Mr. Fitzmaurice, brother to the first marquis of Lansdowne—he is esteemed a very worthy man, and has since lived in habits of intimacy and regard with lord Erskine.” Note of the Editor of “Erskine's Speeches.”

myself, to do him that justice which he was entitled to as my friend, and to pay to my country that tribute which is due from every man when the LIBERTY OF THE PRESS is invaded.

The jury thus assembled, was formed from the first characters in their county:—men who would have most willingly condemned either disaffection to the person of the king, or rebellion against his government: yet when such a jury was impannelled, and such names were found upon it as sir Watkyn Williams Wynn, and others not less respectable, this *public-spirited prosecutor*, who had no other object than public justice, was confounded and appalled.—He said to himself, this will never do.—All these gentlemen know, not only that this paper is not in itself a libel, but that it neither was nor could be published by the dean with a libellous intention; what is worse than all, they are men of too proud an honour to act, upon any persuasion or authority, against the conviction of their own consciences. But how shall I get rid of them?—They are already struck and impannelled, and unfortunately neither integrity nor sense are challenges to jurors.

Gentlemen, in this dilemma, he produced an affidavit, which appeared to me not very sufficient for the purpose of evading the trial; but as those, who upon that occasion had to decide that question upon their oaths, were of a different opinion, I shall not support my own by any arguments, meaning to conduct myself with the utmost reverence for the administration of justice. I shall therefore content myself with stating, that the affidavit contained no other matter, than that there had been published at Wrexham an extract from Dr. Towers's Biography, containing accounts of trials for libels published above a century ago, from which the jurors (if it had fallen in their way, which was not even deposited to) might have been informed of their right to judge their fellow citizens, for crimes affecting their liberties or their lives;—a doctrine not often disputed, and never without the vindication of it, by the greatest and most illustrious names in the law. But, says this *public spirited prosecutor*, IF THE JURY are to try this, I must withdraw my prosecution; for they are men of honour and sense;—they know the constitution of their country, and they know the dean of St. Asaph; and I have therefore nothing left but to apply to the judges, suggesting that the minds of the special jury are so prejudiced, by being told that they are Englishmen, and that they have the power of acquitting a defendant accused of a crime, if they think him innocent, that they are unfit to sit in judgment upon him. Gentlemen, the scheme succeeded; and I was put in my chaise, and wheeled back again, with the matter in my pocket which had postponed the trial;—matter which was to be found in every shop in London, and which had been equally within the reach of

every man, who had sat upon a jury since the times of king Charles the second.

In this manner, above a year ago, the prosecutor deprived my reverend friend of an honourable acquittal in his own country.—It is a circumstance material in the consideration of this indictment, because, in administering public justice, you will, I am persuaded, watch with jealousy to discover, whether public justice be the end and object of the prosecution: and in trying, whether my reverend client proceeded *malo animo* in the publication of this Dialogue, you will certainly obtain some light from examining, *quo animo* the prosecutor has arraigned him before you.

When the indictment was brought down again to trial at the next following assizes, there were no more pamphlets to form a pretext for procrastination—I was surprised, indeed, that they did not employ some of their own party to publish one, and have recourse to the same device which had been so successful before; but this mode either did not strike, or was thought to be but fruitlessly delaying that acquittal, which could not be ultimately prevented.

The prosecutor, therefore, secretly sued out a writ of Certiorari from the court of King's-bench, the effect of which was to remove the indictment from the court of Great Sessions in Wales, and to bring it to trial as an English record in an English county. Armed with this secret weapon to defeat the honest and open arm of justice, he appeared at Wrexham, and gave notice of trial, saying to himself, 'I will take no notice that I have the king's writ, till I see the complexion of the jury;—if I find them men fit for my purpose, either as the prostitutes of power, or as men of little minds, or from their insignificance equally subject to the frown of authority and the blandishments of corruption, so that I may reasonably look for a sacrifice, instead of a trial, I will then keep the Certiorari in my pocket, and the proceedings will of course go forward:—but if, on the contrary, I find such names as I found before;—if the gentlemen of the county are to meet me; I will then, with his majesty's writ in my hand, discharge them from giving that verdict of acquittal, which their understandings would dictate, and their consciences impose.'

Such, without any figure, I may assert to have been the secret language of Mr. Jones to himself, unless he means to slander those gentlemen in the face of this court, by saying that the jurors, from whose jurisdiction he, by his Certiorari, withdrew the indictment, were not impartial, intelligent, and independent men;—a sentiment which he dares not presume even to whisper, because in public or in private he would be silenced by all who heard it.

From such a tribunal this public-spirited prosecutor shrunk a second time: and just as I was getting out of my chaise at Wrex-

ham, after another journey from the other side of the island, without even notice of an intention to postpone the trial, he himself in person (his counsel having, from a sense of honour and decency, refused it) presented the king's writ to the chief justice of Chester, which dismissed the dean for ever from the judgment of his neighbours and countrymen, and which brings him before you to-day.

What opinion then must the prosecutor entertain of your honour, and your virtues, since he evidently expects from you a verdict, which it is manifest from his conduct he did not venture to hope for, from such a jury as I have described to you?

Gentlemen, I observe an honest indignation rising in all your countenances on the subject, which, with the arts of an advocate, I might easily press into the service of my friend; but as his defence does not require the support of your resentments, or even of those honest prejudices, to which liberal minds are but too open without excitation, I shall draw a veil over all that may seduce you from the correctest and the severest judgment.

Gentlemen, the dean of St. Asaph is indicted by the prosecutor, not for having published this little book;—that is not the charge:—he is indicted for publishing a false, scandalous, and malicious libel, and for publishing it (I am now going to read the very words of the charge) ‘with a malicious design and intention to diffuse among the subjects of this realm jealousies and suspicions of the king and his government;—to create disaffection to his person;—to raise seditions and tumults within the kingdom; and to excite his majesty's subjects to attempt, by armed rebellion and violence, to subvert the state and constitution of the nation.’

These are not words of *form*, but of the very essence of the charge. The defendant pleads that he is not guilty, and puts himself upon you his country; and it is fit, therefore, that you should be distinctly informed of the effect of a general verdict of guilty on such an issue, before you venture to pronounce it.—By such a verdict you do not merely find, that the defendant *published the paper in question*; for if that were the whole scope of such a finding, involving no examination into the merits of the thing published, the term *guilty* might be wholly inapplicable and unjust, because the publication of that which is not criminal cannot be a crime, and because a man cannot be *guilty* of publishing that which contains in it nothing which constitutes guilt. This observation is confirmed by the language of the record; for if the verdict of guilty involved no other consideration than the simple fact of publication, the legal term would be, *that the defendant PUBLISHED*, not that he was *GUILTY* of publishing:—yet they, who tell you that a general verdict of guilty comprehends nothing more than the fact of publishing, are forced in the same moment to con-

fess, that if you found *that fact alone*, without applying to it the epithet of *guilty*, no judgment or punishment could follow from your verdict; and they therefore call upon you to pronounce that guilt, which they forbid you to examine into, acknowledging at the same time, that it can be legally pronounced by *NONE BUT YOU*:—a position shocking to conscience, and insulting to common sense.

Indeed, every part of the record exposes the absurdity of a verdict of *guilty*, which is not founded on a previous judgment that the matter indicted is a libel, and that the defendant published it with a criminal intention; for if you pronounce the word *guilty*, without meaning to find sedition in the thing published, or in the mind of the publisher, you expose to shame and punishment the innocence which you mean to protect; since the instant that you say the defendant is *guilty*, the gentleman who sits under the judge is bound by law to record him *guilty in manner and form as he is accused*; i. e. guilty of publishing a seditious libel, with a seditious intention; and the Court above is likewise bound to put the same construction on your finding. Thus, without inquiry into the only circumstance which can constitute *guilt*, and without meaning to find the defendant *guilty*, you may be seduced into a judgment which your consciences may revolt at, and your speech to the world deny; but which the authors of this system have resolved that you shall not explain to the Court, when it is proceeding to punish the defendant on the authority of your intended verdict of acquittal.

As a proof that this is the plain and simple state of the question, I might venture to ask the learned judge, what answer I should receive from the court of King's-bench, if you were this day to find the dean of St. Asaph guilty, but without meaning to find it a libel, or that he published it with a wicked and seditious purpose; and I, on the foundation of your wishes and opinions, should address myself thus to the Court when he was called up for judgment:

‘My lords, I hope that, in mitigation of my client's punishment, you will consider that he published it with perfect innocence of intention, believing, on the highest authorities, that every thing contained in it was agreeable to the laws and constitution of his country; and that your lordships will further recollect that the jury, at the trial, gave no contrary opinion, finding only *the fact of publication*.’

Gentlemen, if the patience and forbearance of the judges permitted me to get to the conclusion of such an absurd speech, I should hear this sort of language from the court in answer to it: ‘We are surprised, Mr. Erskine, at every thing we have heard from you. You ought to know your profession better, after seven years practice of it, than to hold such a language to the court: *you are estopped by the verdict of Guilty, from*

* saying he did not publish with a seditious intention; and we cannot listen to the declarations of jurors in contradiction to their recorded judgment.'

Such would be the reception of that defence;—and thus you are asked to deliver over the dean of St. Asaph into the hands of the judges, humane and liberal indeed, but who could not betray *their* oaths, because you had set them the example by betraying *yours*, and who would therefore be bound to believe him criminal, because you had said so on the record, though in violation of your opinions—opinions upon which, as ministers of the law, they could not act,—to the existence of which they could not even advert.

The conduct of my friend Mr. Bearcroft, upon this occasion, which was marked with wisdom and discretion, is a farther confirmation of the truth of all these observations:—for, if your duty had been confined to the simple question of publication, his address to you would have been nothing more, than that he would call his witness to prove *the fact that the dean published this paper*, instead of enlarging to you, as he has done with great ability, on the libellous nature of the publication. There is, therefore, a gross inconsistency in his address to you,—not from want of his usual precision, but because he is hampered by his good sense in stating an absurd argument, which happens to be necessary for his purpose; for he sets out with saying, that if you shall be of opinion it has no tendency to excite sedition, you must find him *not guilty*; and ends with telling you, that whether it *has* or *has not* such tendency, is a question of *law for the Court*, and foreign to the present consideration.—It requires, therefore, no other faculty than that of keeping awake, to see through the fallacy of such doctrines; and I shall therefore proceed to lay before you the observations I have made upon this Dialogue, which you are desired to censure as a libel.

I have already observed, and it is indeed on all hands admitted, that if it be libellous at all, it is a libel on the public government, and not the slander of any private man.

Now to constitute a libel upon the government, one of two things appears to me to be absolutely necessary. The publication must either arraign and misrepresent the general principles, on which the constitution is founded, with a design to render the people turbulent and discontented under it;—or, admitting the good principles of the government in the abstract, must accuse the existing administration with a departure from them,—in such a manner too, as to convince a jury of an evil design in the writer.

Let us try this little pamphlet by these touchstones, and let the defendant stand or fall by the test.

The beginning, and indeed the evident and universal scope of it, is to render our happy constitution, and the principles on which it is

founded, well understood, by all that part of the community which are out of the pale of that knowledge by liberal studies and scientific reflections;—a purpose truly public-spirited, and which could not be better effected, than by having recourse to familiar comparisons drawn from common life, more suited to the frame of unlettered minds than abstract observations.

It was this consideration that led sir William Jones,* a gentleman of great learning and excellent principles, to compose this Dialogue, and who, immediately after avowing himself to be the author, was appointed by the king to be one of the supreme judges of our Asiatic empire: where he would hardly have been selected to preside, if his work had been thought seditious.—Of this I am sure, that his intentions were directly the contrary.—He thought and felt, as all men of sense must think and feel, that there was no mode so likely to inculcate obedience to government in an Englishman, as to make him acquainted with its principles; since the English constitution must always be cherished and revered exactly in the proportion that it is understood.

He therefore divested his mind of all those classical refinements which so remarkably characterise it, and composed this simple and natural Dialogue between a Gentleman and a Farmer: in which the Gentleman, meaning to illustrate the great principles of public government, by comparing them with the lesser combinations of society, asks the Farmer, what is the object of the little club in the village of which he is a member; and if he is a member of it on compulsion, or by his free consent?—If the president is self-appointed, or rules by election?—If he would submit to his taking the money from the box without the vote of the members?—with many other questions of a similar tendency; and being answered in the negative, he very luminously brings forward the analogy by making the Gentleman say to him, 'Did it never occur to you that every state is but a great club?' or, in other words, that the greater as well as the lesser societies of mankind are held together by social compacts, and that the government of which you are a subject, is not the rod of oppression in the hands of the strongest, but is of your own creation;—a voluntary emanation from yourself, and directed to your own advantage.

Mr. Bearcroft, sensible that this is the just and natural construction of that part of the Dialogue, was very desirous to make you believe that the other part of it, touching the reform in the representation of the people in parliament, had no reference to that context; but that it was to be connected with all that follows about bearing arms. I must therefore

* Sir William Jones is now dead, but his name will live for ever in the grateful memory of his country.

beg your attention to that part of the publication, which will speak plainly for itself.

The Gentleman says to the Farmer, on his telling him he had no vote, 'Do you know that six men in seven have, like you, no voice in the election of those who make the laws which bind your property and life?' and then asks him to sign a petition which has for its object to render elections co-extensive with the trusts which they repose.—And is there a man upon the jury, who does not feel that all the other advantages of our constitution are lost to us, until this salutary object is attained: or who is not ready to applaud every man who seeks to attain it by means that are constitutional?

But, according to my friend, the means proposed were not constitutional, but rebellious. I will give you his own words, as I took them down: 'The Gentleman was saying, very intelligibly,—Sir, I desire you to rebel,—to clothe yourself in armour, for you are cheated of your inheritance.—How are you to rectify this?—How are you to right yourselves?—Learn the Prussian exercise.'

But, how does my friend collect these expressions from the words of the passages, which are shortly these: 'And the petition which I desired you to sign has only for its object the restoration of your right to choose your law-makers.' I confess I am at a loss to conceive how the Prussian exercise finds its way into this sentence.—It is a most martial way of describing pen and ink.—Cannot a man sign a petition without tossing a firelock? I, who have been a soldier, can do either;—but I do not sign my name with a gun. There is, besides, another difficulty in my friend's construction of the sentence.—The object of the petition is the choosing of law-makers; but, according to him, there is to be an end of all law-makers, and of all laws: for neither can exist under the Prussian exercise.—He must be a whimsical scholar, who tells a Farmer to sign a petition for the improvement of government, his real purpose being to set it upon the die of a rebellion, whether there should be any government at all.

But, let me ask you, gentlemen, whether such strained constructions are to be tolerated in a criminal prosecution, when the simple and natural construction of language falls in directly with the fact?—You cannot but know, that, at the time when this Dialogue was written, the table of the House of Commons groaned with petitions presented to the House from the most illustrious names and characters, representing the most important communities in the nation;—not with the threat of the Prussian exercise, but with the prayer of humility and respect to the legislature, that some immediate step should be taken to avert that ruin, which the defect in the representation of the people must sooner or later bring upon this falling empire.—I do not choose to enter into political discussions

here—but we all know, that the calamities which have fallen upon this country have proceeded from that fatal source; and every wise man must be therefore sensible, that a reform, if it can be attained without confusion, is a most desirable object.—But whether it be or be not desirable, is an idle speculation;—because, at all events, the subject has a right to petition for what he *thinks* beneficial; however visionary, therefore, you may think his petition, you cannot deny it to be constitutional and legal; and I may venture to assert, that this Dialogue is the *first abstract speculative writing, which has been attacked as a libel since the Revolution*; and from Mr. Bearcroft's admission, that the proceeding is not prudent, I may venture to foretel that it will be *the last*.

If you pursue this part of the Dialogue to the conclusion, the false and unjust construction put upon it becomes more palpable: 'Give me your pen,' said the Farmer: 'I never wrote my name, ill as it may be written, with greater eagerness.'—Upon which the Gentleman says, 'I applaud you, and trust that your example will be followed by millions.' What example?—Arms?—Rebellion?—Disaffection? No!—but that others might add their names to the petition, which he had advised him to sign, until the voice of the whole nation reached parliament on the subject.—This is the plain and obvious construction; and it is not long since that those persons in parliament with whom my friend associates, and with whom he acts, affected at least to hold the voice of the people of England to be the rule and guide of parliament; and the Gentleman in the Dialogue, knowing that the universal voice of the community could not be wisely neglected by the legislature, only expressed his wish, that the petitions should not be partial, but universal.

With the expression of this wish every thing in the Dialogue upon the subject of representation finally closes; and if you will only honour me with your attention for a few moments longer, I will shew you, that the rest of the pamphlet is the most abstract speculation on government to be found in print; and that I was well warranted when I told you some time ago, that all its doctrines were to be found in the brightest pages of English learning, and in the most sacred volumes of English laws.

The subject of the petition being finished, the Gentleman says, 'Another word before we part. What ought to be the consequence, if THE KING ALONE were to insist on making laws, or on altering them at his will and pleasure?' To which the Farmer answers, 'He too must be expelled.'—'Oh, but think of his standing army,' says the Gentleman, 'and of the militia, which now are his in substance, though ours in form.' Farmer: 'If he were to employ that force against the nation, they would, and ought to resist him, or the state would cease to

'be a state.' And now you will see that I am not countenancing rebellion; for if this were pointed to excite resistance to the king's authority, and to lead the people to believe that his majesty was, *in the present course of his government*, breaking through the laws, and therefore, on the principles of the constitution, was subject to expulsion, I admit that my client ought to be expelled from this, and from every other community.—But is this proved?—No! It is not even asserted.—I say this in the hearing of a judge deeply learned in the laws, and who is bound to tell you, *that there is nothing in the indictment, which even charges such an application of the general doctrine.* The gentleman who drew it is also very learned in his profession; and if he had intended such a charge, he would have followed the rules delivered by the twelve Judges in the House of Lords, in the case of the King against Horne,* and would have set out with saying, that, at the time of publishing the libel in question, there were petitions from all parts of England, desiring a reform in the representation of the people in parliament;—and that the defendant knowing this, and intending to stir up rebellion, and to make the people believe, that his majesty was ruling contrary to law, and ought to be expelled, caused to be published the Dialogue. This would have been the introduction to such a charge; and then when he came to the words, 'He too must be expelled,' he would have said, by way of innuendo, *meaning thereby to insinuate, that the king was governing contrary to law, and ought to be expelled*; which innuendo, though void in itself, without antecedent matter by way of introduction, would, when coupled with the introductory averment on the record, have made the charge complete.—I should have then known what I had to defend my client against, and should have been prepared with witnesses to show you the absurdity of supposing that the dean ever imagined, or meant to insinuate, that the present king was governing contrary to law. But the penner of the indictment, well knowing that you never could have found such an application, and that, if it had been averred as the true meaning of the Dialogue, the indictment must have fallen to the ground for want of such finding, prudently omitted the innuendo:—yet you are desired by Mr. Bearcroft, to take that to be the true construction, which the prosecutor durst not venture to submit to you by an averment in the indictment, and which not being averred, is not at all before you.

But if you attend to what follows, you will observe that the writing is *purely speculative*, comprehending *all* the modes by which a government may be dissolved; for it is followed with the speculative case of injury to a government from bad ministers, and its con-

stitutional remedy—says the Gentleman, 'What, if the great accountants and great lawyers of the nation were to abuse their trust, and cruelly injure, instead of faithfully serving the public, what in *such case* are you to do?' Farmer, 'We must request the king to remove them, and make trial of others, but none should implicitly be trusted.' Request *the king* to remove them! why, according to Mr. Bearcroft, you had expelled *him* the moment before.

Then follows a *third* speculation of a government dissolved by an aristocracy, the king remaining faithful to his trust; for the Gentleman proceeds thus: 'But what if a few great lords or wealthy men were to keep the king himself in subjection, yet exert his force, lavish his treasure, and misuse his name, so as to domineer over the people, and manage the parliament?' Says the Farmer, 'We must fight for the king and for ourselves.' What? for the fugitive king whom the dean of St. Asaph had before expelled from the crown of these kingdoms! Here again the ridicule of Mr. Bearcroft's constructions stares you in the face; but taking it as an abstract speculation of the ruin of a state by aristocracy, it is perfectly plain. When he first puts the possible case of regal tyranny, he states the remedy of expulsion;—when of bad ministers to a good king, the remedy of petition to the throne;—and when he supposes the throne to be overpowered by aristocratic dominion, he then says, 'We must fight for the king and for ourselves.'—If there had been but *one speculation*; viz. of *regal tyranny*, there might have been plausibility at least in Mr. Bearcroft's argument; but when so many different propositions are put, altogether repugnant to and inconsistent with each other, common sense tells every man that the writer is speculative, since no state of facts can suit them all.

Gentlemen, these observations, striking as they are, must lose much of their force, unless you carry along with you the writing from which they arise; and therefore I am persuaded that you will be permitted to day to do what juries have been directed by courts to do on the most solemn occasions, that is, to take the supposed libel with you out of court, and to judge for yourselves whether it be possible for any conscientious or reasonable man to fasten upon it any other interpretation than that which I have laid before you.

If the Dialogue is pursued a little farther, it will be seen, that all the exhortations to arms are pointed to the protection of the king's government, and the liberty of the people derived from it. Says the Gentleman, 'You talk of fighting as if you were speaking of some rustic engagement; but your quarter-staff would avail you little against bayonets.' Farmer, 'We might easily provide ourselves with better arms.'—'Not so easily,' says the Gentleman; 'you ought to

* See vol. 20, p. 651.

'have a strong firelock.' What to do? look at the context,—for God's sake do not violate all the rules of grammar, by refusing to look at the next antecedent!—take care to have a firelock. For what purpose? 'To fight for the king and yourself,' in case the king, who is the fountain of legal government, should be kept in subjection by those great and wealthy lords, who might abuse his authority and insult his title. This, I assert, is not only the genuine and natural construction, but the only legal one it can receive from the Court on this record: since, in order to charge all this to be not merely speculative and abstract, but pointing to the king and his government, to the expulsion of our gracious sovereign, whom my reverend friend respects and loves, and whose government he reverences as much as any man who hears me, there should have been such an introduction as I have already adverted to, viz. *that there were such views and intentions in others, and that he, knowing it, and intending to improve and foment them, wrote so and so; and then on coming to the words, that the king must be expelled, the sense and application should have been pointed by an averment, that he thereby meant to insinuate to the people of England that the present king ought in fact to be expelled; and not speculatively, that under such circumstances it would be lawful to expel a king.*

Gentlemen, if I am well founded in thus asserting, that neither in law nor in fact is there any seditious application of those general principles, there is nothing farther left for consideration, than to see whether they be warranted in the abstract;—a discussion hardly necessary under the government of his present majesty, who holds his crown under the Act of Settlement, made in consequence of the compact between the king and people at the Revolution. What part you or I, gentlemen, might have taken, if we had lived in the days of the Stuarts, and in the unhappiest of their days which brought on the Revolution, is foreign to the present question;—whether we should have been found among those glorious names, who from well-directed principle supported that memorable æra, or amongst those who from mistaken principle opposed it, cannot affect our judgments to-day:—whatever part we may conceive we should or ought to have acted, we are bound by the acts of our ancestors, who determined that there existed an original compact between king and people,—who declared that king James had broken it,—and who bestowed the crown upon another.—The principle of that memorable revolution is fully explained in the Bill of Rights, and forms the most unanswerable vindication of this little book.—The misdeeds of king James are drawn up in the preamble to that famous statute; and it is worth your attention, that one of the principal charges in the catalogue of his offences is, that he caused several of those subjects

(whose right to carry arms is to-day denied by this indictment) to be disarmed in defiance of the laws.—Our ancestors having stated all the crimes for which they took the crown from the head of their fugitive sovereign, and having placed it on the brows of their deliverer, mark out the conditions on which he is to wear it.—They were not to be betrayed by his great qualities, nor even by the gratitude they owed him, to give him an unconditional inheritance in the throne; but enumerating all their ancient privileges, they tell their new sovereign in the body of the law, *that while he maintains those privileges, and no longer than he maintains them, he is king.*

The same wise caution, which marked the acts of the Revolution, is visible in the Act of Settlement on the accession of the House of Hanover, by which the crown was again bestowed upon the strict condition of governing according to law,—maintaining the Protestant religion,—and not being married to a Papist.

Under this wholesome entail, *which again vindicates every sentence in this book*, may his majesty and his posterity hold the crown of these kingdoms for ever!—a wish in which I know I am fervently seconded by my reverend friend, and with which I might call the whole country to vouch for the conformity of his conduct.

But my learned friend, knowing that I was invulnerable here, and afraid to encounter those principles on which his own personal liberty is founded, and on the assertion of which his well-earned character is at stake in the world, says to you with his usual artifice: 'Let us admit that there is no sedition in this Dialogue, let us suppose it to be all constitutional and legal, yet it may do mischief; why tell the people so?'

Gentlemen, I am furnished with an answer to this objection, which I hope will satisfy my friend, and put an end to all disputes among us; for upon this head I will give you the opinion of Mr. Locke, the greatest Whig that ever lived in this country, and likewise of lord Bolingbroke, the greatest Tory in it; by which you will see that Whigs and Tories, who could never accord in any thing else, were perfectly agreed upon the propriety and virtue of enlightening the people on the subject of government.

Mr. Locke on this subject speaks out much stronger than the Dialogue. He says in his *Treatise on Government*,* 'Wherever law ends tyranny begins; and whoever, in authority, exceeds the power given him by the law, and makes use of the force he has under his command, to compass that upon the subject which the law allows not, ceases in that to be a magistrate, and, acting without authority, may be opposed as any other man, who by force invades the rights of another. This is acknowledged in subordinate magis-

* Book 2, chap. 18, § 202.

'trates. He that hath authority by a legal warrant to seize my person *in the street*, may be opposed as a thief and a robber, if he endeavours to break *into my house* to execute it on me there, although I know he has such a warrant as would have empowered him to arrest me abroad. And why this should not hold in the highest as well as in the most inferior magistrate, I would gladly be informed. For the exceeding the bounds of authority is no more a right in a great than in a petty officer, *in a king than in a constable*; but is so much the worse in him, that he has more trust put in him, and more extended evil follows from the abuse of it.'

But Mr. Locke, knowing that the most excellent doctrines are often perverted by wicked men, who have their own private objects to lead them to that perversion, or by ignorant men who do not understand them, takes the very objection of my learned friend, Mr. Bearcroft, and puts it as follows into the mouth of his adversary, in order that he may himself answer and expose it: 'But there are who say that it lays a foundation for rebellion,'—Gentlemen, you will do me the honour to attend to this, for one would imagine Mr. Bearcroft had Mr. Locke in his hand when he was speaking.

'But there are who say that it lays a foundation for rebellion, *to tell the people* that they are absolved from obedience, when illegal attempts are made upon their liberties, and that they may oppose their magistrates when they invade their properties, contrary to the trust put in them; and that, therefore, the doctrine is not to be allowed, as libellous, dangerous, and destructive of the peace of the world.'—But that great man instantly answers the objection, which he had himself raised in order to destroy it, and truly says, 'such men might as well say, that the people should not be told that honest men may oppose robbers or pirates, lest it should excite to disorder and bloodshed.'*

What reasoning can be more just?—for if we were to argue from the possibility, that human depravity and folly may turn to evil what is meant for good, all the comforts and blessings which God, the author of indulgent nature, has bestowed upon us, and without which we should neither enjoy nor indeed deserve our existence, would be abolished as pernicious, till we were reduced to the fellowship of beasts.

The Holy Gospels could not be promulgated; for though they are the foundation of all the moral obligations, which unite men together in society, yet the study of them often conducts weak minds to false opinions, enthusiasm, and madness.

The use of pistols should be forbidden;—for, though they are necessary instruments of self-defence, yet men often turn them re-

vengefully upon one another in private quarrels.—Fire ought to be prohibited;—for though, under due regulations, it is not only a luxury but a necessary of life, yet the dwellings of mankind and whole cities are often laid waste and destroyed by it.—Medicines and drugs should not be sold promiscuously;—for though, in the hands of skilful physicians, they are the kind restoratives of nature, yet they may come to be administered by quacks, and operate as poisons.—There is nothing, in short, however excellent, which wickedness or folly may not pervert from its intended purpose.—But if I tell a man, that if he takes my medicine in the agony of disease, it will expel it by the violence of its operation, will it induce him to destroy his constitution by taking it while he is in health? Just so, when a writer speculates on all the ways by which human governments may be dissolved, and points out the remedies, which the history of the world furnishes from the experience of former ages; is he, therefore, to be supposed to prognosticate instant dissolution in the existing government, and to stir up sedition and rebellion against it?

Having given you the sentiments of Mr. Locke, published three years after the accession of king William, who caressed the author, and raised him to the highest trust in the state, let us look at the sentiments of a Tory, on that subject, not less celebrated in the republic of letters, and on the theatre of the world:—I speak of the great lord Bolingbroke, who was in arms to restore king James to his forfeited throne, and who was anxious to rescue the Jacobites from what he thought a scandal on them, namely the imputation, that, because from the union of so many human rights centered in the person of king James, they preferred and supported his hereditary title on the footing of our own ancient civil constitutions, they, therefore, believed in his claim to govern *jure divino*, independent of the law.

This doctrine of passive obedience, which the prosecutor of this libel must successfully maintain to be the law, and which certainly is the law, if this Dialogue be a libel, was resented above half a century ago by this great writer, even in a tract written while an exile in France on account of his treason against the House of Hanover. 'The duty of the people,' says his lordship, 'is now settled upon so clear a foundation, that no man can hesitate how far he is to obey, or doubt upon what occasions he is to resist. Conscience can no longer battle with the understanding: we know that we are to defend the crown with our lives and fortunes, *as long as the crown protects us, and keeps strictly to the bounds within which the laws have confined it.* We know, likewise, that we are to *do it no longer.*'

Having finished three volumes of masterly and eloquent discussions on our government, he concludes, with stating the duty imposed

* Book 2, chap. 19, §. 223.

on every enlightened mind to instruct the people on the principles of our government, in the following animated passage: 'The whole tendency of these discourses is to inculcate a rational idea of the nature of our free government into the minds of all my countrymen, and to prevent the fatal consequence of those slavish principles, which are industriously propagated through the kingdom, by wicked and designing men. He who labours to blind the people, and to keep them from instruction on those momentous subjects, may be justly suspected of sedition and disaffection; but he who makes it his business to open the understandings of mankind, by laying before them the true principles of their government, cuts up all faction by the roots; for it cannot but interest the people in the preservation of their constitution, when they know its excellence and its wisdom.'

'But,' says Mr. Bearcroft, again and again, 'are the multitude to be told all this?' I say as often on my part, yes. I say, that nothing can preserve the government of this free and happy country, in which under the blessing of God we live;—that nothing can make it endure to all future ages, but its excellence and its wisdom being known, not only to you and the higher ranks of men, who may be overborne by a contentious multitude, but also to the great body of the people, by disseminating among them the true principles on which it is established; which show them, that they are not the hewers of wood and the drawers of water to men who avail themselves of their labour and industry;—but that government is a *trust* proceeding from *themselves*;—an emanation from their own strength;—a benefit and a blessing, which has stood the test of ages;—that they are governed because they desire to be governed, and yield a voluntary obedience to the laws, because the laws protect them in the liberties they enjoy.

Upon these principles I assert with men of all denominations and parties, who have written on the subject of free governments, that this Dialogue, so far from misrepresenting or endangering the constitution of England, disseminates obedience and affection to it as far as it reaches; and that the comparison of the great political institutions with the little club in the village, is a decisive mark of the honest intention of its author.

Does a man rebel against the president of his club while he fulfils his trust?—No: because he is of his own appointment, and acting for his comfort and benefit.—This safe and simple analogy, lying within the reach of every understanding, is therefore adopted by the scholar as the vehicle of instruction; who, wishing the peasant to be sensible of the happy government of this country, and to be acquainted with the deep stake he has in its preservation, truly tells him, that a nation is but a great club, governed by the same consent, and supported by the same voluntary

compact; impressing upon his mind the great theory of public freedom, by the most familiar allusions to the little but delightful intercourses of social life, by which men derive those benefits, that come home the nearest to their bosoms.

Such is the wise and innocent scope of this Dialogue, which, after it had been repeatedly published without censure, and without mischief, under the public eye of government in the capital, is gravely supposed to have been circulated by my reverend friend many months afterwards, with a malignant purpose to overturn the monarchy by an armed rebellion.

Gentlemen, if the absurdity of such a conclusion, from the scope of the Dialogue itself, were not self-evident, I might render it more glaring by adverting to the condition of the publisher—the affectionate son of a reverend prelate* not more celebrated for his genius and learning than for his warm attachment to the constitution, and in the direct road to the highest honours and emoluments of that very church, which, when the monarchy falls, must be buried in its ruins:—nay, the publisher a dignitary of the same church himself at an early period of his life, and connected in friendship with those, who have the dearest stakes in the preservation of the government, and who, if it continues, may raise him to all the ambitions of his profession.—I cannot therefore forbear from wishing that somebody, in the happy moments of fancy, would be so obliging as to invent a reason, in compassion to our dulness, why my reverend friend should aim at the destruction of the present establishment; since you cannot but see, that the moment he succeeded, down comes his father's mitre, which leans upon the crown;—away goes his own deanery, with all the rest of his benefices; and neither you nor I have heard any evidence to enable us to guess what he is looking for in their room.—In the face nevertheless of all these absurdities, and without a colour of evidence from his character or conduct in any part of his life, he is accused of sedition, and under the false pretence of public justice, dragged out of his own country, deprived of that trial by his neighbours, which is the right of the meanest man who hears me, and arraigned before *you*, who are strangers to those public virtues which would in themselves be an answer to this malevolent accusation.—But when I mark your sensibility and justice in the anxious attention you are bestowing, when I reflect upon your characters, and observe from the pannel (though I am personally unknown to you) that you are men of rank in this county, I know how these circumstances of injustice will operate, and freely forgive the prosecutor for having fled from his original tribunal.

Gentlemen, I come now to a point very material for your consideration;—on which

* Dr. Shipley, then bishop of St. Asaph.

even my learned friend and I, who are brought here for the express purpose of disagreeing in every thing, can avow no difference of opinion;—on which judges of old and of modern times, and lawyers of all interests and parties, have ever agreed; namely, that even if this innocent paper were admitted to be a libel, the publication would not be criminal, if you, the jury, saw reason to believe that it was not published by the dean with a *criminal intention*. It is true, that if a paper containing seditious and libellous matter be published, the publisher is *prima facie* guilty of sedition, the bad intention being a legal inference from the act of publishing: but it is equally true, that he may rebut that inference, by showing that he published it innocently.

This was declared by lord Mansfield, in the case of the King and Woodfall:* where his lordship said, that the fact of publication would in that instance have constituted guilt, if the paper was a libel: because the defendant had given no evidence to the jury to repel the legal inference of guilt, as arising from the publication; but he said at the same time, in the words that I shall read to you, that such legal inference might be repelled by proof.

‘There may be cases where the fact of the publication even of a libel may be justified or excused as lawful or innocent; for no fact which is not criminal, even though the paper be a libel, can amount to a publication of which a defendant ought to be found guilty.’

I read these words from Burrow’s Reports, published under the eye of the court, and they open to me a decisive defence of the dean of St. Asaph upon the present occasion, and give you an evident jurisdiction to acquit him, even if the law upon libels were as it is laid down to you by Mr. Bearcroft: for if I show you, that the publication arose from motives that were innocent, and not seditious, he is not a criminal publisher, even if the Dialogue were a libel, and, according even to lord Mansfield, ought not to be found guilty.

The dean of St. Asaph was one of a great many respectable gentlemen, who, impressed with the dangers impending over the public credit of the nation exhausted by a long war, and oppressed with grievous taxes, formed themselves into a committee, according to the example of other counties, to petition the legislature to observe great caution in the expenditure of the public money.† This Dialogue, written by sir William Jones, a near re-

lation of the dean by marriage, was either sent, or found its way to him in the course of public circulation.—He knew the character of the author; he had no reason to suspect him of sedition or disaffection; and believed it to be, what I at this hour believe, and have represented it to you, a plain, easy manner of showing the people the great interest they had in petitioning parliament for reforms beneficial to the public. It was accordingly the opinion of the Flintshire committee, and not particularly of the dean as an individual, that the Dialogue should be translated into Welsh, and published. It was accordingly delivered, at the desire of the committee, to a Mr. Jones, for the purpose of translation.—This gentleman, who will be called as a witness, told the dean a few days afterwards, that there were persons, not indeed from their real sentiments, but from spleen and opposition, who represented it as likely to do mischief, from ignorance and misconception, if translated and circulated in Wales.

Now, what would have been the language of the defendant upon this communication, if his purpose had been that which is charged upon him by the indictment? He would have said, ‘If what you tell me is well-founded, *hasten the publication*; I am sure I shall never raise discontent here, by the dissemination of such a pamphlet in English: therefore let it be instantly translated, if the ignorant inhabitants of the mountains are likely to collect from it that it is time to take up arms.’

But Mr. Jones will tell you, that, on the contrary, the instant he suggested that such an idea, absurd and unfounded as he felt it, had presented itself, from any motives, to the mind of any man, the dean, impressed as he was with its innocence and its safety, instantly acquiesced;—he recalled, even on his own authority, the intended publication by the committee; and it never was translated into the Welsh tongue at all.

Here the dean’s connection with this Dialogue would have ended, if Mr. Fitzmaurice, who never lost any occasion of defaming and misrepresenting him, had not thought fit, near three months after the idea of translation was abandoned, to reprobate and condemn the dean’s conduct at the public meetings of the county in the severest terms, for his former intention of circulating the Dialogue in Welsh,—declaring that its doctrines were *seditious, treasonable, and repugnant to the principles of our government*.

It was upon this occasion that the dean, naturally anxious to redeem his character from the unjust aspersions of having intended to undermine the constitution of his country,—conscious that the epithets applied to the Dialogue were false and unfounded,—and thinking that the production of it would be the most decisive refutation of the groundless calumny cast upon him, directed a few English copies of it to be published in vindication

* Vol. 20, p. 895.

† See, too, the Speech of sir Fletcher Norton, Speaker of the House of Commons, to the King on May 7th, 1777, New Parl. Hist. Vol. 19, p. 213; the Speech of Mr. Rigby, p. 224; and the debate in the House of Commons on the said Speech of sir Fletcher Norton, pp. 227 et seq. of the same Volume. See also the conversation which took place in the House of Commons, March 13, 1780, New Parl. Hist. Vol. 21, p. 233.

of his former opinions and intentions, prefixing an advertisement to it, which plainly marks the spirit in which he published it: for he there complains of the injurious misrepresentations I have adverted to, and impressed with the sincerest conviction of the innocence, or rather the merit of the Dialogue, makes his appeal to the friends of the Revolution in his justification.

[Mr. Erskine here read to the Jury the advertisement as prefixed to the Dialogue.]

Now, gentlemen, if you shall believe upon the evidence of the witness to these facts, and of the advertisement prefixed to the publication itself (which is artfully kept back, and forms no part of the indictment), that the dean, upon the authority of sir William Jones who wrote it,—of the other great writers on the principles of our government,—and of the history of the country itself, really thought the Dialogue innocent and meritorious, and that his single purpose in publishing the English copies, after the Welsh edition had been abandoned, was the vindication of his character from the imputation of sedition,—then he is not guilty upon this indictment, which charges the publication with a wicked intent to excite disaffection to the king, and rebellion against his government.

Actus non facit reum nisi mens sit rea, is the great maxim of penal justice, and stands at the top of the criminal page, in every volume of our humane and sensible laws.—The hostile mind is the crime which it is your duty to decipher;—a duty which I am sure you will discharge with the charity of Christians;—refusing to adopt a harsh and cruel construction, when one that is fair and honourable is more reconcilable, not only with all probabilities, but with the evidence which you are sworn to make the foundation of your verdict.—The prosecutor rests on the single fact of publication, without the advertisement, and without being able to cast an imputation upon the defendant's conduct;—or even an observation to assign a motive to give verisimilitude to the charge.

Gentlemen, after the length of time, which, very contrary to my inclination, I have detained you, I am sure you will be happy to hear, that there is but one other point to which my duty obliges me to direct your attention.—I should, perhaps, have said nothing more concerning the particular province of a jury upon this occasion, than the little I touched upon it at the beginning, if my friend Mr. Bearcroft had not compelled me to it, by drawing a line around you, saying (I hope with the same effect that king Canute said to the sea), “Thus far shalt thou go.” But since he has thought proper to coop you in, it is my business to let you out:—and to give the greater weight to what I am about to say to you, I have no objection that every thing which I may utter shall be considered as proceeding from my own private opinions;

and that not only my professional character, but my more valuable reputation as a man, may stand or fall by the principles which I shall lay down for the regulation of your judgments.

This is certainly a bold thing to say, since what I am about to deliver may clash in some degree (*though certainly it will not throughout*) with the decision of a great and reverend judge, who has administered the justice of this country for above half a century with singular advantage to the public, and distinguished reputation to himself; but whose extraordinary faculties and general integrity, which I should be lost to all sensibility and justice if I did not acknowledge with reverence and affection, could not protect him from severe animadversion when he appeared as the supporter of those doctrines which I am about to controvert. I shall certainly never join in the calumny that followed them, because I believe he acted upon that, as upon all other occasions, with the strictest integrity;—an admission which it is my duty to make, which I render with great satisfaction, and which proves nothing more, than that the greatest of men are fallible in their judgments, and warns us to judge from the essences of things, and not from the authority of names, however imposing.

Gentlemen, the opinion I allude to is, that *libel or not libel* is a question of *law* for the judge, your jurisdiction being confined to the *fact of publication*. And if this were all that was meant by the position (though I could never admit it to be consonant with reason or law), it would not affect me in the present instance, since all that it would amount to would be, that the judge, and not you, would deliver the only opinion which can be delivered from that quarter upon this subject. But what I am afraid of upon this occasion is, that *neither of you are to give it*; for so my friend has expressly put it. ‘My lord,’ says he, ‘will probably not give you his opinion whether it be a libel or not, because, as he will tell you, it is a question open upon the record, and that if Mr. Erskine thinks the publication innocent, he may move to arrest the judgment.’ Now this is the most artful and the most mortal stab that can be given to justice, and to my innocent client.—All I wish for is, that the judgment of the Court should be a guide to yours in determining, whether this pamphlet be or be not a libel;—because, knowing the scope of the learned judge's understanding and professional ability, I have a moral certainty that his opinion would be favourable.—If therefore libel or no libel be a question of law, as is asserted by Mr. Bearcroft, I call for his lordship's judgment upon that question, according to the regular course of all trials, where the law and the fact are blended; in all which cases the notorious office of the judge is to instruct the consciences of the jury, to draw a correct legal conclusion from

the facts in evidence before them. A jury are no more bound to return a special verdict in cases of libel, than upon other trials criminal and civil, where law is mixed with fact:—they are to find generally upon both, receiving, as they constantly do in every court at Westminster, the opinion of the judge both on the evidence and the law.

Say the contrary who will, I assert this to be the genuine, unrepealed constitution of England; and therefore, if the learned judge shall tell you that this pamphlet is in the abstract a libel; though I shall not agree that you are therefore bound to find the defendant guilty unless you think so likewise, yet I admit his opinion ought to have very great weight with you, and that you should not rashly, nor without great consideration, go against it.—But if you are only to find the *fact of publishing*, which is not even disputed; and the judge is to tell you, that the matter of libel being on the record, *he shall shut himself up in silence, and give no opinion at all as to the libellous and seditious tendency of the paper, and yet shall nevertheless expect you to affix the epithet of GUILTY to the publication of a thing, the GUILT of which YOU are forbid, and HE refuses to examine*;—miserable indeed is the condition into which we are fallen! Since if you, following such directions, bring in a verdict of Guilty, without finding the publication to be a libel, or the publisher seditious; and I afterwards, in mitigation of punishment, shall apply to that humanity and mercy which is never deaf, when it can be addressed consistently with the law; I shall be told in the language I before put in the mouths of the Judges, ‘You are estopped, Sir, by the verdict: we cannot hear you say your client was mistaken, but not GUILTY; for, had *that* been the opinion of the jury, they had a jurisdiction to acquit him.’

Such is the way in which the liberties of Englishmen are by this new doctrine to be shuffled about from jury to court, without having any solid foundation to rest on. I call this the effect of *new* doctrines, because I do not find them supported by that current of ancient precedents which constitutes English law.—The history of seditious libels is perhaps one of the most interesting subjects which can agitate a court of justice, and my friend thought it prudent to touch but very slightly upon it.

We all know, that by the immemorial usage of this country, no man in a criminal case could ever be compelled to plead a special plea;—for although our ancestors settled an accurate boundary between law and fact, obliging the party defendant who could not deny the latter to show his justification to the court; yet a man accused of a crime had always a right to throw himself by a general plea upon the justice of his peers; and on such general issue, his evidence to the jury might ever be as broad and general as if he

had pleaded a special justification. The reason of this distinction is obvious.—The rights of property depend upon various intricate rules, which require much learning to adjust, and much precision to give them stability; but CRIMES consist wholly in intention; and of that which passes in the breast of an Englishman as the motives of his actions, none but an English jury shall judge. It is therefore impossible, in most criminal cases, to separate law from fact; and consequently whether a writing be or be not a libel, *never can be an abstract legal question for judges*.—And this position is proved by the immemorial practice of courts, the forms of which are founded upon legal reasoning; for that very libel, over which it seems you are not to entertain any jurisdiction, is always read, and often delivered to you out of court for your consideration.

The administration of criminal justice in the hands of the people, is the basis of all freedom.—While that remains there can be no tyranny, because the people will not execute tyrannical laws on themselves.—Whenever it is lost, liberty must fall along with it, because the sword of justice falls into the hands of men, who, however independent, have no common interest with the mass of the people.—Our whole history is therefore chequered with the struggles of our ancestors to maintain this important privilege, which in cases of libel has been too often a shameful and disgraceful subject of controversy.

The ancient government of this country not being founded, like the modern, upon public consent and opinion, but supported by ancient superstitions, and the lash of power, saw the seeds of its destruction in a free press. Printing therefore, upon the revival of letters, when the lights of philosophy led to the detection of prescriptive usurpations, was considered as a matter of state, and subjected to the controul of licensers appointed by the crown: and although our ancestors had stipulated by Magna Charta, that no freeman should be judged but by his peers, the courts of Star-chamber and High Commission, consisting of privy counsellors erected during pleasure, opposed themselves to that freedom of conscience and civil opinion, which *even then* were laying the foundations of the Revolution.—Whoever wrote on the principles of government was pilloried in the Star-chamber, and whoever exposed the errors of a false religion was persecuted in the Commission court.—But no power can supersede the privileges of men in society, when once the lights of learning and science have arisen amongst them.—The prerogatives which former princes exercised with safety, and even with popularity, were not to be tolerated in the days of the first Charles, and our ancestors insisted that these arbitrary tribunals should be abolished.—Why did they insist upon their abolition?—Was it that the question of libel, which was their principal juris-

diction, should be determined only by the judges at Westminster?—In the present times even such a reform, though very defective, might be consistent with reason, because the judges are now, honourable, independent, and sagacious men; but in those days they were often wretches,—libels upon all judicature;—and instead of admiring the wisdom of our ancestors, if that had been their policy, I should have held them up as lunatics, to the scoff of posterity; since in the times when these unconstitutional tribunals were supplanted, the courts of Westminster-hall were filled with men who were equally the tools of power with those in the Star-chamber;—and the whole policy of the change consisted in that principle, which was then never disputed, viz. That the judges at Westminster in criminal cases were but a part of the court, and could only administer justice through the medium of a jury.

When the people, by the aid of an upright parliament, had thus succeeded in reviving the constitutional trial by the country, the next course taken by the ministers of the crown, was to pollute what they could not destroy.—Sheriffs devoted to power were appointed, and corrupt juries packed to sacrifice the rights of their fellow citizens, under the mask of a popular trial. This was practised by Charles the second; and was made one of the charges against king James, for which he was expelled the kingdom.

When juries could not be found to their minds, judges were daring enough to brow-beat the jurors, and to dictate to them what they called the law; and in Charles the second's time an attempt was made, which, if it had proved successful, would have been decisive.—In the year 1670 Penn and Mead,* two Quakers, being indicted for *seditiously* preaching to a multitude *tumultuously* assembled in Gracechurch-street, were tried before the recorder of London, who told the jury that they had nothing to do but to find whether the defendants had preached or not; for that, whether the matter or the intention of their preaching were seditious, were questions of law and not of fact, which they were to keep to at their peril. The jury, after some debate, found Penn guilty of speaking to people in Gracechurch-street; and on the recorder's telling them that they meant, no doubt, that he was speaking to a *tumult* of people there; he was informed by the foreman, that they allowed of no such words in their finding, but adhered to their former verdict.—The recorder refused to receive it, and desired them to withdraw, on which they again retired and brought in a general verdict of acquittal; which the court considering as a contempt, set a fine of forty marks upon each of them, and condemned them to lie in prison till it was paid.—Edward Bushel,* one

of the jurors (to whom we are almost as much indebted as to Mr. Hampden, who brought the case of Ship Money* before the court of Exchequer) refused to pay his fine, and, being imprisoned in consequence of the refusal, sued out his writ of Habeas Corpus, which, with the cause of his commitment (*viz. his refusing to find according to the direction of the court in matter of law*), was returned by the sheriffs of London to the court of Common Pleas; when lord chief justice Vaughan, to his immortal honour, delivered his opinion as follows:—‘We must take off this veil and colour of words, which make a show of being something, but are in fact nothing. If the meaning of these words, *finding against the direction of the court in matter of law*, be, that if the judge, having heard the evidence given in court (for he knows no other), shall tell the jury upon this evidence, that the law is for the crown, and they, under the pain of fine and imprisonment, are to find accordingly; every man sees that the jury is but a troublesome delay, great charge, and of no use in determining right and wrong; and therefore the trials by them may be better abolished than continued; which were a strange and new-found conclusion, after a trial so celebrated for many hundreds of years in this country.’

He then applied this sound doctrine with double force to criminal cases, and discharged the upright juror from his illegal commitment.

This determination of the right of juries to find a general verdict was never afterwards questioned by succeeding judges; not even in the great Case of the Seven Bishops,† on which the dispensing power and the personal fate of king James himself in a great measure depended.

These conscientious prelates were, you know, imprisoned in the Tower, and prosecuted by information for having petitioned king James the second to be excused from reading in their churches the declaration of indulgence, which he had published contrary to law.—The trial was had at the bar of the court of King's-bench, when the Attorney General of that day, rather more peremptorily than my learned friend (who is much better qualified for that office, and whom I should be glad to see in it), told the jury, *that they had nothing to do but with the bare fact of publication*, and said he should therefore make no answer to the arguments of the bishops' counsel, as to whether the petition was or was not a libel. But chief justice Wright (no friend to the liberty of the subject, and with whom I should be as much ashamed to compare my lord, as Mr. Bearcroft to that Attorney General) interrupted him, and said, ‘Yes, Mr. Attorney, I will tell

* See their Case in this Collection, Vol. 6, p. 999.

† See his Case in this Collection, Vol. 6, p. 951.

* See Vol. 3, p. 825.

† See their Case in this Collection, Vol. 12, p. 183.

‘you what they offer, which it will lie upon you to answer: they would have you show the jury how this petition has disturbed the government, or diminished the king’s authority.’ So say I. I would have Mr. Bearcroft show you, gentlemen, how this Dialogue has disturbed the king’s government,—excited disloyalty and disaffection to his person,—and stirred up disorders within these kingdoms.

In the case of the Bishops, Mr. Justice Powell followed the Chief Justice, saying to the jury, ‘I have given my opinion; but the whole matter is before you, gentlemen, and you will judge of it.’ Nor was it withdrawn from their judgment; for although the majority of the court were of opinion that it was a libel, and had so publicly declared themselves from the bench, yet by the unanimous decision of all the judges, after the court’s own opinion had been pronounced by way of charge to the jury, the petition itself, which contained no innuendos to be filled up as facts, was delivered into their hands to be carried out of court, for their deliberation.—The jury accordingly withdrew from the bar, carrying the libel with them; and (puzzled, I suppose, by the infamous opinion of the judges) were most of the night in deliberation;—all London surrounding the court with anxious expectation for that verdict, which was to decide whether Englishmen were to be freemen or slaves.—Gentlemen, the decision was in favour of freedom, for the reverend fathers were acquitted; and though acquitted in direct opposition to the judgment of the court, yet it never occurred even to those arbitrary judges who presided in it to cast upon them a censure or a frown. This memorable and never-to-be-forgotten trial is a striking monument of the importance of these rights, which no juror should ever surrender; for if the legality of the petition had been referred as a question of law to the court of King’s-bench, the bishops would have been sent back to the Tower,—the dispensing power would have acquired new strength,—and perhaps the glorious era of the Revolution and our present happy constitution might have been lost.

Gentlemen, I ought not to leave the subject of these doctrines, which in the libels of a few years past were imputed to the noble earl of whom I formerly spoke, without acknowledging that lord Mansfield was neither the original composer of them, nor the copier of them from these impure sources: it is my duty to say, that lord chief justice Lee, in the case of the King against Owen,* had recently laid down the same opinions before him.—But then both of these great judges always conducted themselves on trials of this sort, as the learned judge will no doubt conduct himself to-day; they considered the jury as open to all the arguments of the defend-

ant’s counsel; and in the very case of Owen, who was acquitted against the direction of the court, the present lord Camden addressed the jury, not as I am addressing you, but with all the eloquence for which he is so justly celebrated.—The practice, therefore, of these great judges is a sufficient answer to their opinions; for if it be the law of England, that the jury may not decide on the question of libel, the same law ought to extend its authority to prevent their being told by counsel that they may.

There is indeed no end of the absurdities which such a doctrine involves; for suppose that this prosecutor, instead of indicting my reverend friend for publishing this Dialogue, had indicted him for publishing the Bible, beginning at the first book of Genesis, and ending at the end of the Revelations, without the addition or subtraction of a letter, and without an innuendo to point out a libellous application, only putting in at the beginning of the indictment that he published it with a blasphemous intention:—on the trial for such a publication Mr. Bearcroft would gravely say, ‘Gentlemen of the jury, you must certainly find by your verdict, that the defendant is guilty of this indictment, i. e. guilty of publishing the Bible with the intentions charged by it. To be sure, every body will laugh when he hears it, and the conviction can do the defendant no possible harm; for the court of King’s-bench will determine that it is not a libel, and he will be discharged from the consequences of the verdict.’—Gentlemen, I defy the most ingenious man living to make a distinction between that case and the present; and in this way you are desired to sport with your oaths, by pronouncing my reverend friend to be a criminal, without either determining yourselves, or having a determination, or even an insinuation from the judge that any crime has been committed; following strictly that famous and respectable precedent of Rhadamanthus, judge of hell, who punishes first, and afterwards institutes an enquiry into the guilt.*

But it seems your verdict would be no punishment, if judgment on it was afterwards arrested.—I am sure, if I had thought the dean so lost to sensibility, as to feel it no punishment, he must have found another counsel to defend him.—But I know his nature better.—Conscious as he is of his own purity, he would leave the court hanging down his head in sorrow, if he were held out by your verdict a seditious subject, and a disturber of the peace of his country.—The arrest of judgment, which would follow in the term upon his appearance in court as a convicted criminal, would be a cruel insult upon his inno-

* I doubt whether the disreputation of Rhadamanthus is authorised by the passage in Virgil,

“Gnosius hinc Rhadamanthus habet severissima regna

Castigatque auditque dolos”—which I believe gave rise to it.

* See the Case in this Collection, Vol. 18, p. 1203.

cence, rather than a triumph over the unjust prosecutors of his pretended guilt.

Let me, therefore, conclude with reminding you, gentlemen, that if you find the defendant guilty, not believing the thing published to be a libel, or the intention of the publisher seditious, your verdict and your opinions will be at variance, and it will then be between God and your own consciences to reconcile the contradiction.

As the friend of my client, and the friend of my country, I shall feel much sorrow, and you yourselves will probably hereafter regret it, when the season of reparation is fled. But why should I indulge such unpleasant apprehensions, when in reality I fear nothing? I know it is impossible for English gentlemen, sitting in the place you do, to pronounce this to be a seditious paper; much less, upon the bare fact of publication, explained by the prefixed advertisement, and the defendant's general character and deportment, to give credit to that seditious purpose which is necessary to convert the publication even of a libel itself into a crime.

I beg pardon of my lord, and of you, gentlemen, for the long time I have trespassed upon your indulgent and patient attention: nothing, indeed, but the duty I owe my client could have induced me to do it, after the fatigue I have sustained in a very long journey to appear before you.*

* I should incur the self-reproach of injustice and of ingratitude towards my highly respected neighbours the members of the Corporation of Gloucester, if upon the present occasion I forbore to insert from their records the following very honourable document:

" City of Gloucester to wit,

" At a Common Council House, held at the Tolsey in the same City, on Friday the first day of October, 1784.

" THE EARL OF SURREY, MAYOR.

" Resolved,

" That the Freedom of this City be presented to the Honourable Thomas Erskine, Barrister at Law, as a testimony of the approbation of this Corporation of his zeal, abilities, and spirit, with which he defended the Rights of Juries on the late Trial of the Dean of Saint Asaph, at Shrewsbury, for a Libel; and that the same be communicated to him by the Right Honourable the Mayor of this City, and be published in such public Papers as the said Mayor shall think proper."

VOL. XXI.

EVIDENCE FOR THE DEFENDANT.

Mr. Edward Jones sworn.

Examined by Mr. Erskine.

You know the Dialogue that has been the subject of discussion here to-day?—Yes.

Do you recollect it being the intention of the Flintshire Committee to translate that Dialogue into the Welsh tongue?—I was a member of that Committee, and there was a resolution of that body for translating it into Welsh.

I believe it was put into your hands, in order to get it delivered to that person to translate it?—Yes, to Mr. Lloyd of —.

You afterwards, I believe, communicated to the dean that you thought it would be better not to proceed in the translation of it into Welsh?

Mr. Bearcroft. Mr. Erskine, how can this be evidence?

Mr. Erskine. To explain the advertisement prefixed to the Dialogue, and to shew, that it is not merely a colour in the defendant, but that he did prevent the translation of it; that is, to prove an act.

Mr. Bearcroft. I still say it is not admissible evidence, but I shall not object to it.

Mr. Erskine. Did you mention that to the dean?—A. Yes. The dean said he had received it from sir William Jones that morning, or so very lately that he had not had time to read it. Afterwards, I wrote to the dean, mentioning the resolutions we had come to, adopting some of the resolutions of the county of York, as to the extension of the representation. I mentioned that, and also that I had collected the opinion of some gentlemen that it might do harm; and that I thought he had better not publish it. I communicated to the dean, that we had resolved at a prior meeting to call the county together, to consider of an address. I did not see the dean again till the morning of that county meeting. The dean said to me, "I am very much obliged to you for what you have communicated to me respecting the pamphlet; I should be exceeding sorry to publish any thing that should tend to sedition;" or to that effect.

And in consequence of that declaration of the dean, it never was translated?—No; I returned it to him, instead of translating it.

When did this happen?—On the morning of the last meeting of the Committee; it was, the 7th of January.

Some people, I believe, had made pretty free with the dean for wishing to publish a thing of that sort?—A great deal had been said about it.

At the county meeting?—There was something said about it at the county meeting.

Was it not very much reprehended by some persons at the county meeting?—Yes.

The date of the publication shews this was published three months afterwards. Mr. Fitz-

maurice has been proved the prosecutor of this indictment originally. Do you recollect Mr. Fitzmaurice branding this Dialogue with any particular epithets?—Generally. I do not recollect particularly what epithets.

Cross-examined by Mr. Bearcroft.

You, and many of the friends of the defendant, if I understand you, thought this had a seditious tendency, and you apprised the dean of it, and begged it might not be translated into Welsh?—Not so; the gentlemen I conversed with were not at all connected with it.

I only want correctly to understand you. The dean said to you, that he should be sorry to publish any thing that tended to sedition; that of course must have been an answer to some suggestion on your part that it did tend to sedition?—My first communication with the dean was in writing. I cannot charge my memory exactly to what that was. I stated, that several gentlemen had disliked the publication; and I mentioned myself to him that morning, that it might have some tendency of that sort, and he said he should be sorry to publish any thing that might have that tendency.

Mr. *Erskine*. You said it differed with respect to the resolution of the York Committee?—A. We had adopted the resolution of the York Committee, and that was my leading objection to a publication of this pamphlet, because this pamphlet contradicted exactly what we had resolved upon.

Mr. *Bearcroft*. How long after the proposed publication in Welsh was this publication?—A. The meeting at which it was resolved was, I believe, the of November, and this meeting was the 7th of January.

Whether you have not heard Mr. Shipley read this pamphlet and defend it, and at the same time say, he knew very well that he was doing that with a rope about his neck, or some such expression?—That was in consequence of something that was said. It was publicly said at the meeting, and before the dean, that it was treasonable, and many opprobrious epithets were made use of. The dean then said, "I am now called upon to shew that it is not seditious, and I read it with a rope about my neck."

Dean of *St. Asaph*. Whether there were not some other ironical expressions that I made use of besides that?

Mr. *Bearcroft*. In point of law, that question is put irregularly. You did not mean it, but it should be expressed in another way.

Mr. *Erskine*. Did you collect from what the dean said, that his opinion was, that the Dialogue was legal and constitutional?—A. Undoubtedly. The dean said, "Now I have read this in public, I don't think it so bad a thing, and I think we ought to publish it in vindication of the Committee."

Mr. *Erskine*. The defendant being very singularly circumstanced, owing to the na-

ture of the Welsh judicature, and the impossibility of bringing on the trial in another place, where persons who are criminals are supposed to be usually tried, I must beg your lordship's permission, in a case where so much turns upon the intention, to call three or four gentlemen, of great consequence and reputation in that county where the dean lives, to prove his general deportment and behaviour.

Mr. Just. *Buller*. That is what I have never known done in these cases: it operates much in the same way as it would in cases of felony: it may have effect hereafter as to the punishment—I have no sort of objection to it.

Sir *Watkin Williams Wynn*, bart. sworn.

Examined by Mr. Corbett.

Are you acquainted with the dean of *St. Asaph*?—Yes.

How long have you been acquainted with Mr. Shipley?—Twelve years.

During the time you have had any acquaintance with him, have you had any reason to suppose him a man capable of being guilty of that which is now imputed to him?—No.

You are a near neighbour, I believe?—We have lived sometimes near, and sometimes at a farther distance.

You were one of the gentlemen of the jury, I believe, when the trial was put off?—Yes, and the only person sworn.

Sir *Roger Mostyn*, bart. sworn.

Examined by Mr. Erskine.

I believe you are lord lieutenant of the county of Flint?—I am.

Do you know the dean of *St. Asaph*?—Yes.

How long have you known him?—Several years.

Have you ever, as lord lieutenant of that county, reposed any public trust in the dean?—I proposed him for the commission of the peace, and afterwards appointed him a deputy lieutenant.

How has he deported himself in those situations?—I believe, very well.

Mr. *Bearcroft*. Mr. *Erskine*, you should content yourself with asking the general questions.

Mr. *Erskine*. From what you know of the dean, do you think him capable of stirring up sedition or rebellion?—No.

Major *Williams* sworn.

Examined by Mr. Corbett.

I believe you have been some time acquainted with the dean of *St. Asaph*?—Yes.

Do you think him capable of the crime imputed to him?—No.

Do you think him likely to be a man to stir up sedition?—Far contrary; I think him one of the first that would quell it.

Colonel *Myddleton* sworn.

Examined by Mr. *Broderick*.

How long have you known the dean of St. Asaph?—Near twelve years.

What has been his character? You will please to confine your evidence with regard to his peaceable behaviour, or otherwise.—I have attended with the dean at private meetings with the justices, at vestry meetings, and at quarter sessions, and I never saw a man of greater humanity.

Do you think him a man of a quiet temper, or otherwise?—I never saw him otherwise, and I must beg leave to say, I believe the king has not a better subject in his dominions than the dean of St. Asaph.

Mr. *Bennet Williams* sworn.

Examined by Mr. *Abbot*.

I believe you have known the dean some years?—I have, many years.

You have acted with him upon public and other occasions?—Constantly.

Has he deported himself as a peaceable, or as a factious man?—As a peaceable man.

Do you think him capable of stirring up sedition against the king?—No; on the contrary, I don't believe the king has a better subject.

End of the Evidence for the Defendant.

REPLY.

Mr. *Bearcroft* :

Gentlemen of the Jury; I rise, because it is my duty to do so, in the character of counsel for this prosecution, to make some observations on the defence which has been attempted. If the prosecution have in it any spleen, malignity, or malevolence, those will be much mistaken who have chosen me for the instrument of any such passions. I believe I may appeal to my practice of many years in the profession, whether I would ever debase myself so much as to mix the private spleen of an individual with the public character of a prosecutor in the name of the king. Certainly the law of this country permits any subject, at his own peril, to use the name of the king to prosecute for public offences. He that abuses it is open to the law; and if it were possible, that you could put the defendant in the situation to bring an action for a malicious prosecution, that law is open to him, and he may try that question.

Gentlemen, I shall not follow the learned gentleman of counsel for the defendant, in many wanderings and aberrations from the true question which you are to try. You are to say, is he guilty, or not? Whether he has been prosecuted with propriety, you have nothing to do with, nor with the summoning of the first jury and the second jury, and the reasons why he comes to be tried by a third

jury, here in Shropshire. A short answer will I give to that, but, as I conceive, a full one. These proceedings are according to the law of the land. If there be any hardship in them, it is what that law permits, and it will be right in that discretion which is to finish this cause, to consider whether those things have been right or wrong, when the defendant comes up for judgment. You have nothing to do with it, it could not be brought before you, nor has it been, in evidence: of course, therefore, again and again I call you back to the business that you have sworn to perform; that is, to try the issue joined between the king and the defendant, and which you are sworn to determine according to the evidence.

Gentlemen, I really did not know, when I first found myself suddenly in the situation of the prosecutor of the dean of St. Asaph, that he was such a man as has been described to-day by his counsel. It is a great character—it is a strong one. I am sorry to encounter with such a one as he is represented by his own counsel to be; a man who is said to have demeaned himself so well in his county, that he has received the thanks of his whole county. An honour, indeed, if the whole county means what the dean himself in this pamphlet says it does mean, that is, a majority of every man of twenty-one in that county; for that is the county, according to the dean's representation, and according to that definition of it I hope it is that his counsel was authorized to speak.

Gentlemen, a great many topics have been urged in order to contrive the escape of the defendant from this charge. Every thing that has been said upon any great question of libel, has been produced upon this occasion; and whatever he may have done for his client, my learned friend has most undoubtedly well acquitted himself.

I shall take notice of a few of those arguments that appear the most specious: I own that which struck my reason as the fairest was this. It was said, Here is a prosecution for an offence that is contended to be big with great public mischief; application has been made to the great law officers of the crown, and to the ministry of the nation, to take up this prosecution;—they have not done it; therefore (reasons my learned friend) it cannot be an offence—it cannot be an offence of any great importance. He has quoted me, too, against myself, because I made use of the expression (not unadvisedly, I promise you), that I thought the prosecution not very prudent; at the same time I told you, I thought it legal. My learned friend has chosen to consider me in a light which does not, that I am aware of, belong to me. He has made me a present to a party who will not, I dare say, think worth while to accept me; and he has made a present of a party to me, that I have no right to call upon. He has challenged me to make an excuse for those traitors to

their country, the Attorney and Solicitor Generals, who at one time were called upon to prosecute this libel.

Gentlemen, I shall make them but little compliment when I say (but I protest that is the reason that occurs to me), that they thought as I did upon the subject—that they thought it not prudent. Now I will tell you why I thought so: perhaps it might be their reason. It does not follow that it is wise and prudent to prosecute and to punish every offence; it is often wiser to treat it with disdain and contempt. In my opinion—(and I believe myself when I say it), the reverend defendant would have been shocked and disappointed, unless somebody had prosecuted him. I believe it. Men who make publications of this kind, however they may profess it, do not do it in the true purity of patriotism; that is the stalking-horse to hide every private design of whatever sort; but depend upon it, that a man who commits himself to paper, and prints in the way that the defendant has done,—his object is prosecution, that he may call it persecution, that he may be a saint, and almost a martyr, amongst his particular friends and party. He must know, since he has turned his mind to the considering objects of this kind, that the way to keep a party together is to prosecute, and is to punish; and we should never have him at the head, nor any member left, if it had been left unnoticed and unprosecuted. If this had not been thrown out to me as a kind of challenge, I should not have said a syllable about it, because I am decidedly of opinion, that it is not any thing to the purpose of the present enquiry, that is, whether the defendant is guilty of this charge.

My learned friend has supposed that I have endeavoured to take away from you your power of jurisdiction and judgment, and to put you in a narrower line of consideration upon this question than the law puts you. I am not conscious of that. I am sure I did not design it: there is nothing in this case that could possibly lead me to stand forth (in possession of some little degree of character, I am willing to hope) to hazard that, and to become an object of public odium in a prosecution by a private prosecutor, to state the law of libels otherwise than it is. The consequence would be, I well know, that I myself should become the object of a thousand libels; I certainly therefore do not mean it, and in order to set it straight in two words,

In the first place, I am free to confess this: there is no law in this country (thank God there is not, for it would not be a free constitution if there were) that prevents a jury upon a criminal question, if they choose it, to find a general verdict. I admit it—I rejoice in it—I admire and reverence that principle as the palladium of the constitution. But, gentlemen, does it follow because a jury may do this, that they must do it? that it is fit, and wise, and prudent, that they should do it? If it

should be the misfortune of any of you to live in such times as produced a prosecution for a libel against the Seven Bishops, do as your predecessors did, spurn at all the Attorney General's doctrine; say Not guilty; and not a word more. You will do your duty, and your names will be handed down to posterity with honour: but if there is a moderate, a temperate prosecution, an enquiry and attempt to administer the law of the land as it is, that man is not your friend, permit me to say, that asks of you to take upon you to decide upon nice questions of law, if it be not necessary. I am sure you cannot, as sensible men, wish it.

Gentlemen, you may in an action of ejectment for an estate of 10,000*l.* a year—you may, if you please, set the judge's direction at nought in point of law; you may take upon you to determine upon the effect of a common recovery of conveyance; the operation of a fine, and say, Don't tell me of your law, my favourite shall have the estate; I, therefore, find a general verdict for the plaintiff. Who says this may not be done? I don't say that it will have its effect, because there is a power (and I thank God there is) to correct such extravagancies, and to set aside the verdict.—Why? Why, because you would have abused your powers. Not that the court does not allow the power, for they allow you may give the verdict, but they will say it is wrong; you must go to a new trial. I admit that you may, if you please, each of you take upon your shoulders points of law that have created differences and debates between the best men that ever lived in the profession: but I should suppose, from what I have observed about you, that you would see no occasion to do it now, and certainly there is none; you know it of your own knowledge: but if you did not, my learned friend has informed you, by giving that high character to the present courts of justice, which I shall not repeat, nor should I have suggested, because I believe no gentleman in England wants to be informed of it as a piece of news.

My learned friend supposes that I am arguing for an absurdity, and that I am insisting that you are not to determine upon the question, Libel or no libel; and that my lord is not to give any opinion upon it; and therefore he draws this conclusion—nobody is to decide upon it, and yet his client is to be punished. Now, to be sure, that is a gross absurdity; but I contend for no such thing. I say, you are to decide upon this evidence, whether the defendant has published a printed paper, that has been produced to you. That he has published it, has been proved—it has been admitted in argument—it has been triumphed in, and stated as a matter of merit in the defendant. The fact of the publication of the paper then stands without controversy, and thus far beyond all doubt you are advanced.—Does it relate to the king and his government, I say, is the sole question—is

the simple fact, which remains for you, the jury, to decide; except that I suppose when the pamphlet speaks of the king, you will find it to speak of the present king; and that you will suppose, that when he talks about the parliament and the administration, that he speaks of the present government. I verily believe, that I shall hear the authority which presides to-day, and which I am as ready to bow to, without any affectation, as my learned friend, confirm me in this. I say, it is for you to decide that point, and for you only; and I do contend, upon the greatest, the best-founded authority, after the most mature consideration, after what I may call an appeal to the public upon the question—that libel, or no libel, is a question of law for the court. In the case my learned friend has alluded to of the King against Woodfall,* as I took the noble lord whom he has alluded to by a description that so peculiarly belongs to him, and marks him for the first of judges—to which, by gratitude and truth, I am bound to subscribe most heartily; that noble lord, in the face of the world, in court, declared that to be the doctrine. He said, “This has been my constant direction to juries, conceiving it my bounden duty so to direct juries. If this be right, I am right; if this be wrong, I have been wrong, and I desire to be corrected.” I say, that upon such a subject, this was a solemn and not unbecoming appeal to the public, as well as to the profession; and I recollect too, he says, ‘You will remember the opinion of those that are now dead, and of those living, who are not now present,’ appealing to characters whom we all respect, and who were not at all likely to decide unconstitutionally. Upon that occasion too it was expressly laid down to be law, that as to the epithets of malicious, seditious, wicked, or false, or of the adverbs belonging to those epithets, maliciously, seditiously, wickedly, and falsely, that they were matters of law not for the juries to decide upon; for that it appeared upon the face of the libel itself, when that libel was applied to the matter that is spoken of as it stands charged upon the record. Why, gentlemen, is this a great trust to repose in the judges of the common law? Has not the common law imposed a much greater in the judges of this land from the beginning of time? Do you take upon you, or did you ever know that any jury did, to decide what circumstances make homicide murder? No; all the authorities in the law have said, that murder or not murder is a question of law. You may read it in the ablest writers upon the subject. One of them (Mr. Justice Foster) in terms says, as I remember, murder or not murder is a question of law for the judges. Therefore, all that I am arguing for is, that that is law in a question of libel which is admitted to be law in every other case. But so it is, that the spirit

of party being agitated and raised in every question of libel, there always has been, and there will be, a struggle upon every part of the proceeding, and a diversity of opinions arising from that spirit, and not from any real doubt or difficulty belonging to the subject. If, however, you will dismiss all considerations of party, you will find yourselves in the most ordinary situation that ever juries are put in, that is to say, that in a case where a question of law arises, you may shift it from your shoulders, and put it upon those that are better able to bear it, and say, “We will determine what belongs to us, the fact; you, the judges, will decide the law, in whose breast it is reposed.”

What the law is, I have stated already. Libel or not libel is upon the face of the record; but my learned friend says, that I will not let the judge here, according to my doctrine, give an opinion upon it. Is there any thing uncommon in that? Is not that the effect of every finding of a special verdict? I am sure, the learned judge who sits here to preside upon this trial will tell you, he does not sit here to decide great questions of law, but to direct a trial in a legal mode, and to lead you to legal conclusions, in order to find certain facts; but whenever it happens, that the question of the law and the fact can be clearly separated, we will take your opinion in point of fact. Your opinion will determine the fact, and no judge can alter it. But that record, as to the point of law, will have the opinion of the court from whence it comes pronounced upon it.

And now, gentlemen, let me shew you the wisdom of our law, and the happiness of our constitution. You may, if you choose, take upon you to determine the question of law; but then you stop the subject short in the power of appealing to superior courts. But let it be separated from the facts, let it be upon the record as it is here, the dean is not bound by the decision here. He is not bound by the decision of the court from whence this record comes. He has a right to appeal to the highest judicature of this nation, and to take the opinion of the House of Peers upon this subject. But if you decide the law in that box, it is stopped, and it can go no farther.

Gentlemen, Don't let us suppose that the law is calculated for partial and particular purposes; you see the wisdom and the equity of it, and how it leads to the fullest and fairest discussion; for somewhere there must be a power of decision. I contend, therefore, that as to the epithets, the adverbs that you have here, they are not for you; and I contend this, that though they are found upon the record, yet if you were to find the defendant guilty generally with that upon the record, I say, that the judges of the court have a right to look upon the record, and to give their opinion upon it; that though the jury have thought, or seemed to think, that there is

* See Vol. 20, p. 895.

truth in all these epithets upon the record, the court has a right to say, We look to the thing itself; we look to the law arising out of that, and say, that in point of law this is not a libel. So that in both ways of considering the question, I trust I have gone the length to satisfy you that this is a question of fact only for you to determine: Did he publish this? Did he mean the king and his government?

Now, Gentlemen, as to that my learned friend says, that the scope of this pamphlet is perfectly innocent; nay, says he, it is not only innocent, but meritorious; it is to render our constitution well understood; and he says, he (the dean) has written luminously upon this subject: he has, says my learned friend, made men wiser and better. We know of a history in a book which the rev. dean must be well acquainted with; in which we read of a being who made one of our first parents much wiser, but little better. It appears to me, that the reverend defendant, in the teeth of his general profession, has exactly so demeaned himself. He finds an innocent farmer, contented with his station, enjoying the blessings of this constitution in an humble state, which those above, it seems, are so wanton to quarrel with; and he asks this man whether he has ever thought of something more than his happy situation as a husbandman that can pay his rent? No, says the man, I never entertained ideas so high. He proceeds in the old way: first of all, by flattery, to lift him up above himself, and to make him believe, as the serpent did Eve, that she was a being of a much higher nature than she at all suspected; and at last, by what he may call, for aught I know, a Socratical way of argument, he persuades this man all in a sudden, in a fury of madness, to say, "Give me the petition, I will sign my name to it."

Now what is the object of this petition?—Six in seven, says the defendant,—six in seven in this country have no votes; though my learned friend says, that it is to render our constitution well understood; to persuade mankind that every male of age has a right to choose his own representative; aye, and for fear they should be robbed of that right, to bear arms. All of you have heard of a Polish diet; this country would be worse, if that scheme was to take effect. I say, it is not the constitution; and at the hazard of any libels that any set of men may choose to throw at my head, I have no difficulty to say, that the man who maintains this proposition, that every man of twenty-one has a right, by this constitution, to choose his representative in parliament, is either a fool or a knave. If he believes himself, he is an idiot; if he does not, he is a dishonest man. So I state my poor sentiments upon the subject; and I cannot help thinking that it would not be very easy to answer them.—These ideas are not so extravagant, perhaps,

if the kingdom of England consisted of no more subjects than a district ten times as large, inhabited by a few Indians half civilized. You would do well, perhaps, to have such a nation sit in a ring, and each give their opinions; but multiply that in consequence of civilization, and let it consist of millions, and you will see the glaring absurdity. Even if you were to suppose that once was the usage, what man, in a civilized state, would not wish to get rid of it? It cannot be exercised, it is too big, too heavy to be wielded; let us away, therefore, with all this kind of knowledge, which, in my apprehension, would tend to nothing but confusion and sedition, and not to the good of the kingdom.

My learned friend has told you, that he is of opinion that the charge upon this record is not sufficiently clear: he has chosen to suppose that it might have been drawn better, by inserting matter introductory, as he calls it, which would explain the business. Having said that the matter of law is for the consideration of the court, I should contradict myself if I answered that by any other means than what I take to be a perfect legal answer: it is upon the record. If there be any ground for the argument, that there is something deficient; if you find the defendant guilty the moment I sit down, yet he will in effect be not guilty, because judgment will be arrested for want of that which the learned gentleman says ought to be there.

Gentlemen, I love ingenuity, and I love my friend for his ingenuity, I seriously do; and he has given a very strong instance of it in a few arguments he has offered. Says he, If publishing a book be itself a libel, the publication of the Bible is a libel; and the argument to make it a libel must be, that it may be abused. Gentlemen, I don't charge the reverend dean with publishing the Bible: I don't charge him with that, which I admit is not an offence—preaching to a multitude only. But other arguments are made use of; and my friend says, the best things may be abused. Fire, says he, is a very good friend, a very good servant, but a very bad master. I believe that is the observation upon it. Why, a man is a bad subject, and is guilty of an offence, who sets fire too near the houses of the neighbourhood. It has been very lately solemnly determined, upon consideration, that to set fire to your own house, in a public street, is, on account of the danger to the neighbourhood, an offence. Medicine is good, says my friend; but it may be misapplied. It may so, by persons who step out of their own profession and turn quacks; but I protest I don't at all feel how these observations apply to the present case, unless, perhaps, in a way that will by no means assist the defendant.

My learned friend has quoted Mr. Locke and my lord Bolingbroke: they are great names—the head, he says, of the Whigs, and the head of the Tories; but, good God! are we to learn law and decorum; and to search

for a decision in a sort of party dispute, from the heads of parties? If you have a spark of party in any one of your breasts at this moment, extinguish it, if you can, in order to do your duty as jurymen as you ought to do. I love party; I honour it; I believe it preserves the constitution. Factions are dreadful, and they destroy every constitution; party preserves it. Let me see the Whigs and the Tories nearly balanced, sometimes one uppermost, and sometimes the other: the vibration is wholesome, whilst the center stands unmoved; it is like the flux and reflux of our famous river Thames: it keeps the water wholesome and pure: I like it; but let it not come into a court of justice.

My learned friend has quoted the case of the Seven Bishops. I should not be an Englishman if I did not love to hear of that case; but I don't love the misapplication of it. Be so good as to remember the circumstances of it, which my learned friend has not thought proper to speak of. It was a shameful and a wicked attempt, and an unconstitutional one, at the instigation of the king, and by his own officers, to make a libel of a humble, a decent, and a private petition of lords of parliament (who have a right to apply to the king upon public subjects), beseeching his majesty's better consideration of certain measures. It was said there, that the chief justice called upon the attorney general to prove that this petition had disturbed the king's government. He did well; it was not a libel in point of fact; they had not proved it a libel, or any thing like it; nor even had they proved the publication of it: for if I go, with decency and propriety, to my superior to ask aid and assistance, to represent with a good meaning any inconvenience, and wish the matter may be reconsidered, that is no publication. In the case I speak of, I mean to keep that secret between myself and the person that I apply to; but if I publish it in a twopenny pamphlet in English, and all but publish it in Welsh in the principality of Wales, that is a far different conduct.

Gentlemen, if you look into the history of the trial of the Seven Bishops, you will find, that upon that ground it was considered as no publication: that case cannot apply therefore to the present, where beyond all doubt we have proved a publication. But did it remain that it were necessary for me to prove to you that the publication tended to sedition, I thank my learned friend as far as I find myself disposed to return thanks in the case of a prosecution. It is for the sake of the public I thank my friend for having thought proper to call the witness he has done, Mr. Jones; for it appears to me, by his evidence, he has brought it home that it does clearly tend to sedition. My learned friend says he is called to shew innocence; for, says he, a man's mind must go with the wickedness and illegality of the act, or he is not guilty. I have, says he, called this witness to prove to

you, that the moment that he knew, and it was represented to him by Mr. Jones and his friends, that this might tend to sedition, that he did—what?—did not publish it in Welsh. Did he call in the English edition? Did he, like a man convinced, say, I have been in an error—I am sorry? Did he publish any thing like a recantation? Did he administer the antidote to the poison? Did he do that?

But, gentlemen, are we now-a-days to hear such an answer as this, that in an English court of law this shall be stated as the law of the land? I did not know that I was committing an offence, therefore it is no offence. Is it not a maxim of the law, that ignorance does not excuse? Must it not of necessity be a principle, that whatever I do in public I am to abide by the consequence. For God's sake, gentlemen, what would you say, if, upon the trial of any offence now in the other court, it should be stated and attempted to be proved, that the man who committed a burglary did not know that by that law he lost his life? or that some friends had persuaded him? or that he had persuaded himself that property was in common? or that he had a right to go into another man's house and take it, and state complete ignorance of the law? Must not he answer for the act he has done? I have no objection, therefore, to let the dean have all the advantage that fairly and directly belongs to this testimony; but take it as it goes, rough and smooth, I say it proves, though that is unnecessary, that it tended to sedition. I acknowledge that it proves that the dean—(whether from prudence or conviction, but I have a right to say the former; for had it been from conviction, he should have endeavoured to call back his former publications, or to have cured them by confession that he was wrong)—he stopped, however, and did go no farther.

Gentlemen, I beg your pardon for having taken up so much of your time. I protest I feel no zeal in this prosecution beyond what becomes me, in a cause of some expectation; which naturally calls upon one to state one's self as one feels upon the subject. I have nothing to do with the prosecutor, no more than you have: only decide upon this question which is now before you, which I take to be, as I have repeated it so often, simply, Did the defendant publish this paper? Did he publish it, speaking of the government? If he did, it falls upon you (the jury) to say he is guilty of that publication; that is, that he is guilty of this charge. When you have found him guilty of this charge, if it contains by law no criminal matter, there are those who will set it right. This I take to be the law upon the subject; this I take to be the question before you; and I now readily deliver you up to that authority to which you will and ought to pay respect. By the course I have taken, I shall hardly recommend myself to my opponents; and if there be, what is suggested, malevolence and spleen in the

prosecutors, I am sure they will never engage me as their advocate again; and in that case I shall not be sorry for it. If I have stated the question rightly, *fiat justitia ruat cælum* is all I say further to you upon this subject.

Mr. Justice Buller:

Gentlemen of the Jury; This is an indictment against William Davies Shipley, for publishing the pamphlet which you have heard, and which the indictment states to be a libel.

The defendant has pleaded that he is not guilty; and whether he is guilty of the fact or not, is the matter for you to decide.

On the part of the prosecution, to prove the publication, they have called Mr. Edwards, who says, that the words 'Gentleman' and 'Farmer' in the pamphlet which he now produces, are of the dean of St. Asaph's handwriting. He received the pamphlet which he now produces from the dean, with the directions, which he has also produced, and which have been read to you. These directions are, that he would get it printed with an advertisement affixed to it, which is contained in that letter which has been read. This letter appears to be dated the 24th of January, 1783; and, in consequence of that letter, which desires him to get the inclosed Dialogue printed, he sent it to Marsh a printer, according to the directions contained in the letter.

John Marsh says, this pamphlet was printed at their office from what was sent by Mr. Edwards. After some copies were struck off he saw the dean; he told him Mr. Jones had had several copies: the dean seemed then quite surprised that any stir should be made about it.

William Jones is then called, who says, he bought the second pamphlet produced, from Marsh, in the month of February, 1783. He says, he is the prosecutor of the indictment: then he told you that he applied to the Treasury about the prosecution, and they did not take it up.

This is the whole of the evidence for the prosecution.

For the defendant, Edward Jones has been called, who says, he was a member of the Flintshire committee; that it was intended by them to print this Dialogue in Welsh. The dean said, he had received the pamphlet so late from sir William Jones, that he had not had time to read it. He says, he told the dean that he had collected the opinions of some gentlemen, which were, that it might do harm. After that the dean told him, that he was obliged to him for his information, that he should be sorry to publish any thing that tended to sedition, and it was upon this reason that it was not published in Welsh. This passed on the 7th of January, 1783. Some time after, Mr. Shipley said, "he would read it, to shew it was not so seditious; but that he read it with a rope about

his neck;" and when he read it he gave his opinion he did not think it quite so bad.

Mr. Erskine. I ask your lordship's pardon, I believe the witness said it was at the county meeting where the dean said this.

Mr. Jones. It was the same day, the 7th of January.

Mr. Justice Buller. Yes, afterwards at the county meeting he said he would read it, to shew it was not so seditious; but that he read it with a rope about his neck. When he had read it, he said he did not think it so bad.

Then he called five gentlemen, who speak to his character.

Sir Watkin Williams Wynn says, he has known the defendant eight or nine years; he does not think him a man likely to be guilty of that which is now imputed to him.

Sir Roger Mostyn, who is lord lieutenant of Flintshire, says, he has known the defendant several years—that he put him into the commission of the peace, and appointed him a deputy lieutenant—that, in his opinion, he does not think the defendant capable of stirring up sedition or rebellion.

Major Williams says, he has no reason to believe the defendant capable of being guilty of the crime imputed to him; on the contrary, he thinks he would be the first that would quell sedition.

Col. Myddleton says, he has known the dean of St. Asaph near twelve years, that he has attended with the dean at private meetings of the justices, and at quarter sessions, and, in his judgment, the king has not a better subject.

Bennet Williams likewise says, he has known the dean many years—that the defendant is a peaceable man, not capable of stirring up sedition, and he thinks he is as peaceable a subject as any the king has.

Now, gentlemen, this is the whole of the evidence that has been given on the one side and the other.—As to the several witnesses who have been called to give Mr. Shipley the character of a quiet and peaceable man, not disposed to stir up sedition, that cannot govern the present question; for the question for you to decide, is, Whether he is or is not guilty of publishing this pamphlet?

You have heard a great deal said, which really does not belong to the case, and a part of it has embarrassed me a good deal in what manner to treat it.—I cannot subscribe to a great deal that I have heard from the defendant's counsel; but I do readily admit the truth and wisdom of that proposition which he stated from Mr. Locke, that "wherever the law ends, tyranny begins."—The question then is, What is the law as applicable to this business? and to narrow it still more, What is the law in this stage of the business?—You have been pressed very much by the counsel, and so have I also, to give an opinion upon the question; whether this pamphlet is or is not a libel? Gentlemen, it is my

happiness that I find the law so well and so fully settled, that it is impossible for any man who means well, to doubt about it; and the counsel for the defendant was so conscious that the law was so settled, that he himself stated what he knew must be the answer which he would receive from me;—that is, That the matter appears upon the record, and as such, it is not for me, a single judge, sitting here at *nisi prius*, to say, whether it is or is not a libel. Those who adopt the contrary doctrine, forget a little to what lengths it would go; for if that were to be allowed, the obvious consequence would be what was stated by the counsel in reply, namely, that you deprive the subject of that which is one of his dearest birthrights: you deprive him of his appeal—you deprive him of his writ of error; for if I was to give an opinion here that it was not a libel, and you adopted that, the matter is closed for ever. The law acts equally and justly, as the pamphlet itself states—it is equal between the prosecutor and the defendant; and whatever appears upon the record is not for our decision here, but may be the subject of future consideration in the court out of which the record comes; and afterwards, if either party thinks fit, they have a right to carry it to the dernier resort, and have the opinion of the House of Lords upon it; and therefore that has been the uniform and established answer not only in criminal but civil cases. The law is the same in both, and there is not a gentleman round this table who does not know that is the constant and uniform answer which is given in such cases.

You have been addressed by the quotation of a great many cases upon libels. It seems to me, that that question is so well settled, that gentlemen should not agitate it again; or at least, when they do agitate it, it should be done by stating fairly and fully what has passed on all sides, not by stating a passage or two from a particular case that may be twisted to the purpose that they want it to answer. And how this doctrine ever comes to be now seriously contended for, is a matter of some astonishment to me; for I do not know any one question in the law which is more thoroughly established than that is. I know it is not the language of a particular set or party of men, because the very last case that has ever arisen upon a libel, was conducted by a very respectable and a very honourable man,* who is as warm a partisan, and upon the same side of the question, as the counsel for the defendant, and, I believe, of what is called the same party. But he stated the case in few words, which I certainly adopted afterwards, and of which, I believe, no man ever doubted about the propriety. That case arose not three weeks ago at Guildhall upon a question of a libel; and

in stating the plaintiff's case, he told the jury that there could be but three questions.

The first is, Whether the defendant is guilty of publishing the libel?

The second, Whether the innuendos or the averments made upon the record are true?

The third, which is a question of law, Whether it is or is not a libel? Therefore, said he, the two first are the only questions you have to consider: and this, added he, very rightly, is clear and undoubted law. It is adopted by me as clear and undoubted law, and it has been so held for considerably more than a century past. It is indeed admitted by the counsel, that upon great consideration, it was so held in one of the cases he mentioned, by a noble and learned lord who has presided a great many years, with very distinguished honour, in the first court of criminal justice in this country; and it is worthy of observation, how that case came on. For 28 years past (during which time we have had a vast number of prosecutions in different shapes for libels) the uniform and invariable conduct of that noble judge has been, to state the questions as I have just stated them to you; and though the cases have been defended by counsel not likely to yield much, yet that point was never found fault with by them, and often as it has been enforced by the court, they never have attempted yet by any application to set it aside. At last it came on in this way; the noble judge himself brought it on, by stating to the court what his directions had always been, with a desire to know whether, in their opinions, the direction was right or wrong? The court were unanimously of opinion that it was right, and that the law bore no question or dispute.—It is admitted by the counsel likewise, that in the time that my lord chief justice Lee presided in the court of King's-bench, the same doctrine was laid down as clear and established. A sounder lawyer, or a more honest man, never sat on the bench than he was. But if we trace the question farther back, it will be found, that about the year 1731 (which, I suppose, has not escaped the diligence of the counsel) another chief justice [Raymond] held the same doctrine, and in terms which are more observable than those in most of the other cases, because they shew pretty clearly when it was that this idea was first broached.—That was, an information against one Franklin (I think) for publishing a libel called *The Craftsman*.*—The then chief justice stated the three questions to the jury in the same way I mentioned. He said, "The first is as to the fact of publication; secondly, Whether the averments in the information are true or not; and thirdly, Whether it is a libel." He says, "there are but two of these questions for your consideration;—the third is merely a question of law, with which you, the jury, have nothing to do, as

* Mr. John Lee, at that time his majesty's attorney general.

* See the Case, Vol. 17, p. 626.

has now of late been thought by some people, who ought to know better; but," says he, "we must always take care to distinguish between matters of law and matters of fact, and they are not to be confounded."

With such a train of authorities, it is really extraordinary to hear the matter now insisted on as a question which admits a doubt; and if we go farther back, it will be found still clearer: for about the time of the Revolution, authorities will be found which go directly to the point. In one of them, which arose within a year or two from the time of the Case of the Seven Bishops which the counsel alluded to, a defendant, in an information for a libel, which was tried at bar, said to the court, "As the information states this to be a scandalous and seditious libel, I desire it may be left to the jury to say whether it is a scandalous and seditious libel, or not." The answer then given by the court was, "That is matter of law; the jury are to decide upon the fact; and if they find you guilty of the fact, the court will afterwards consider whether it is or is not a libel."*—If one goes still farther back, we find it settled as a principle which admits of no dispute, and laid down so early as the reign of queen Elizabeth as a maxim, that "*ad questionem facti respondent juratores, ad questionem juris respondent judices.*" And in the case that the counsel has thought fit to allude to, under the name of Bushell's Case, the same maxim is recognized by the court negatively, viz. "*ad questionem facti non respondent judices, ad questionem legis non respondent juratores;*" for, said the court unanimously, if it be asked of the jury what the law is, they cannot say; if it be asked of the court what the fact is, they cannot say.

Now, so it stands as to legal history upon the business. Suppose there were no authority at all, can any thing be a stronger proof of the impropriety of what is contended for by the counsel for the defendant, than what they have had recourse to? They have addressed you—not as is very usual to address a jury, which you must know yourselves, if you have often served upon them; they have addressed you upon a question of law, on which they have quoted cases for a century back. Now, are you possessed of those cases in your own minds? are you apprized of the distinctions on which those determinations are founded? Is it not a little extraordinary to require of a jury, that they should carry all the legal determinations in their minds? If one looks a little farther into the constitution, it seems to me, that, without recourse to authorities, it cannot admit of a doubt. What is the mode of administering justice in this country?—The judges are appointed to decide the law, the juries to decide the fact.—How?—Both under the solemn obligation of an oath. The judges

are sworn to administer the law faithfully and truly. The jury are not so sworn, but to give a true verdict according to the evidence. Did ever any man hear of it, or was it ever yet attempted to give evidence of what the law was?—If it were done in one instance, it must hold in all.—Suppose a jury should say, that which is stated upon a record is high treason or murder; if the facts charged upon the record are not so, it is the duty of the Court to look into the record, and they are bound by their oaths to discharge the defendant. The consequence if it were not so would be, that a man would be liable to be hanged, who had offended against no law at all. It is, after the fact is found by the jury, for the Court to say whether it is any offence or not. It would undoubtedly hold in civil cases as well as criminal; and as the counsel for the prosecution has said in reply, by the same reason in the case of an ejectment, you might decide contrary to the law. But was it ever supposed, that a jury was competent to say what is the operation of a fine, or a recovery, or a warranty, which are mere questions of law?—

Then the counsel says, it is a very extraordinary thing, if you have nothing else to decide but the fact of publication; because then the jury are to do nothing but to decide that which was never disputed.—Now, there is a great deal of art in that argument, and it was very ingeniously put by the counsel; but there is a fallacy in the argument, which arises from the want of distinguishing how the matter comes here, and how it stands now. It is not true, that the defendant, by the issue, admits that he ever published it.—No; upon the record he denies it; but when he comes here, he thinks fit to admit it; but that does not alter the mode of trial.

Then it is asserted, that if you go upon the publication only, the defendant would be found guilty, though he is innocent. But that is by no means the case; and it is only necessary to see how many guards the law has made, to shew how fallacious that argument is.—If the fact were, that the defendant never denied the publication, but meant to admit it, and insist that it was not a libel, he had another way in which he should have done it (a way universally known to the profession)—he ought to have demurred to the indictment; by which in substance he would have said—I admit the fact of publishing it, but deny that it is any offence.—But he is not precluded, even now, from saying it is not a libel; for if the fact be found by you, that he did publish the pamphlet, and upon future consideration the court of King's-bench shall be of opinion that it is not a libel, he must then be acquitted.* As to his coming here, it is his own choice.

* Qu. Is Tutchin's the case here intended? See Vol. 14, p. 1095.

* It must be obvious to every body that upon this doctrine the Press was in the hands of Judges appointed by the crown. Note to Lord Erskine's Speeches.

But, say the counsel farther, it is clear in point of law, that in a criminal case the defendant cannot plead specially: therefore he might give any thing in evidence that would be a justification if he could plead specially.—I admit it;—but what does that amount to? You must plead matter of fact: you cannot plead matter of law; the plea is bad if you do. Then admitting that he could give that in evidence upon not guilty, which would in point of law, if pleaded, amount to an excuse or a defence, the question still is, what are the facts on which the defence is founded? That brings the case to the question of publication; for the innuendos are no more than this: the indictment says, that by the letter G. is meant Gentleman, and by the letter F. is meant Farmer. Now the title of this pamphlet is, “The Principles of Government, in a Dialogue between a Gentleman and a Farmer.” The first question is whether the G. means Gentleman and the F. Farmer; the next question is not upon initials or letters that may be doubtful, but whether *the King* written at length means the *King of Great Britain*, and whether *the Parliament* means the *Parliament of Great Britain*. These are points I don’t know how to state a question upon; and if you are satisfied as to the innuendos, the only remaining question of fact is as to the publication.

Whether Mr. Edward Jones’s evidence will or will not operate in mitigation of punishment, is not a question for me to give an opinion upon, because it is not for me to inflict the punishment if the defendant is found guilty. But upon his evidence it stands thus: the dean had thoughts of printing the pamphlet in Welsh; but upon what was said to him by Mr. Jones and other gentlemen, his friends, he declined it. But he afterwards published it in English: for this conversation is sworn by Jones to be on the 7th of January, and not till the 24th of January does he send this letter to Edwards with the pamphlet, desiring that it might be published; therefore there is no contradiction as to the publication; and if you are satisfied with this in point of fact, it is my duty to tell you in point of law, you are bound to find the defendant guilty.—I wish to be as explicit as I can in the directions I give, because if I err in any respect, it is open to the defendant to have it corrected. As far as it is necessary to give any opinion in point of law upon the subject of the trial, I readily do it; beyond that I don’t mean to say a word, because it is not necessary nor proper here. In a future stage of the business, if the defendant is found guilty, he will have a right to demand my opinion; and if ever that happens, it is my duty to give it, and then I will: but till that happens, I do not think it proper, or by any means incumbent upon one who sits where I do, to go out of the case to give an opinion upon a subject which the present stage of the case does not require. Therefore

I can only say, that if you are satisfied that the defendant did publish this pamphlet, and are satisfied as to the truth of the innuendos in point of law, you ought to find him guilty. If you are not satisfied of that, you will of course acquit him.

The Jury withdrew to consider of their verdict, and in about half an hour returned again into Court.

Associate. Gentlemen, do you find the defendant Guilty or Not Guilty?

Foreman. Guilty of publishing *only*.

Mr. Erskine. You find him guilty of publishing *only*?

A Juror. Guilty only of publishing.

Mr. Justice Buller. I believe that is a verdict not quite correct. You gentlemen of the jury must explain one way or the other, whether you find the meaning of the innuendos. The indictment has stated that G. means Gentleman, F. Farmer,—The King, the King of Great Britain, and the Parliament, the Parliament of Great Britain. Do you find him Guilty?*

* Here the report published by Mr. Gurney differs considerably from that given in the “The Speeches of the Hon. Thomas Erskine.” The former is exhibited in the text. In the latter this concluding interrogatory of Mr. Justice Buller’s speech is omitted, and then follows:

One of the Jury. We have no doubt of that.

Mr. Justice Buller. If you find him guilty of publishing, you must not say the word *only*.

Mr. Erskine. By that they mean to find there was no sedition.

A Juror. We only find him guilty of publishing. We do not find any thing else.

Mr. Erskine. I beg your lordship’s pardon, with great submission. I am sure I mean nothing that is irregular. I understand they say, We only find him guilty of publishing.

A Juror. Certainly, that is all we do find.

Mr. Broderick. They have not found that it is a libel of and concerning the king and his government.

Mr. Justice Buller. If you only attend to what is said, there is no question or doubt. If you are satisfied whether the letter G. means Gentleman, whether F. means Farmer, the King means King of Great Britain, the Parliament the Parliament of Great Britain—if they are all satisfied it is so,—is there any other innuendo in the indictment?

Mr. Leicester. Yes, there is one more upon the word *votes*.

Mr. Erskine. When the jury came into court, they gave, in the hearing of every man present, the very verdict that was given in the case of the King against Woodfall; they said, Guilty of publishing only. Gentlemen, I desire to know whether you mean the word *only* to stand in your verdict.

One of the Jury. Certainly.

Another Juror. Certainly.

Mr. Justice Buller. Gentlemen, if you add the word *only*, it will be negating the innuendos; it will be negating, that by the word King it means King of Great Britain; by the word Parliament, Parliament of Great Britain; by the letter F. it means Farmer, and G. Gentleman; that I understand you do not mean.

One of the Jury. Yes, we find him guilty of that.

Mr. Erskine. They find the defendant guilty of publishing *only*.

A Juror. No.

Mr. Erskine. My lord, I say that will have the effect of a general verdict of Guilty. I desire the verdict may be recorded. I desire your lordship, sitting here as judge, to record the verdict as given by the jury. If the jury depart from the word *only*, they alter their verdict.

Mr. Justice Buller. I will take the verdict as they mean to give it; it shall not be altered. Gentlemen, if I understand you right, your verdict is this, you mean to say guilty of publishing this libel?

A Juror. No; the pamphlet; we do not decide upon its being a libel.

Mr. Justice Buller. You say he is guilty of publishing the pamphlet, and that the meaning of the innuendos is as stated in the indictment.

A Juror. Certainly.

Mr. Erskine. Is the word *only* to stand part of your verdict?

A Juror. Certainly.

Mr. Erskine. Then I insist it shall be recorded.

Mr. Justice Buller. Then the verdict must be misunderstood; let me understand the jury.

Mr. Erskine. The jury do understand their verdict.

Mr. Justice Buller. Sir, I will not be interrupted.

Mr. Erskine. I stand here as an advocate for a brother citizen, and I desire that the word *only* may be recorded.

Mr. Justice Buller. Sit down, Sir; remember your duty, or I shall be obliged to proceed in another manner.

Mr. Erskine. Your lordship may proceed in what manner you think fit; I know my duty as well as your lordship knows yours. I shall not alter my conduct.

Mr. Justice Buller. Gentlemen, if you say guilty of publishing *only*, you negative the meaning of the particular words I have mentioned.

A Juror. Then we beg to go out.

Mr. Justice Buller. If you say guilty of publishing *only*, the consequence is this, that you negative the meaning of the different words I mentioned to you—That is the operation of the word *only*—They are endeavouring to make you give a verdict in words different from what you mean.

A Juror. We should be very glad to be informed how it will operate?

Mr. Justice Buller. If you say nothing more but find him guilty of publishing, and leave out the word *only*, the question of law is open upon the record, and they may apply to the court of King's bench, and move in arrest of judgment there. If they are not satisfied with the opinion of that Court, either party has a right to go to the House of Lords, if you find nothing more than the simple fact; but if you add the word *only*, you do not find all the facts; you do not find in fact that the letter G. means Gentleman; that F. means Farmer; the King, the King of Great Britain; and Parliament, the Parliament of Great Britain.

A Juror. We admit that.

Mr. Justice Buller. Then you must leave out the word *only*.

Mr. Erskine. I beg pardon, I beg to ask your lordship this question, Whether, if the jury find him guilty of publishing, leaving out the word *only*, and

One of the Jury. We don't say any thing to judge of the libel, we only find him guilty of publishing.

Mr. Erskine. I beg your lordship's par-

if the judgment is not arrested by the court of King's-bench, whether the sedition does not stand recorded?

Mr. Justice Buller. No, it does not, unless the pamphlet be a libel in point of law.

Mr. Erskine. True; but can I say that the defendant did not publish it seditiously, if judgment is not arrested, but entered in the record?

Mr. Justice Buller. I say it will not stand as proving the sedition. Gentlemen, I tell it you as law, and this is my particular satisfaction, as I told you when summing up the case; if in what I now say to you I am wrong in any instance, they have a right to move for a new trial. The law is this: if you find him guilty of publishing, without saying more, the question whether libel or not is open for the consideration of the Court.

A Juror. That is what we mean.

Mr. Justice Buller. If you say, Guilty of publishing *only*, it is an incomplete verdict, because of the word *only*.

A Juror. We certainly mean to leave the matter of libel to the Court.

Mr. Erskine. Do you find sedition?

A Juror. No; not so. We do not give any verdict upon it.

Mr. Justice Buller. I speak from adjudged cases (I will take the verdict when you understand it yourselves in the words you give it): if you say, Guilty of publishing *only*, there must be another trial.

A Juror. We did not say so; only guilty of publishing.

Mr. Erskine. Will your lordship allow it to be recorded thus, only guilty of publishing?

Mr. Justice Buller. It is misunderstood.

Mr. Erskine. The jury say, only guilty of publishing. Once more, I desire that that verdict may be recorded.

Mr. Justice Buller. If you say, only guilty of publishing, then it is contrary to the innuendos; if you think the word King means the King of Great Britain; the word Parliament, the Parliament of Great Britain; the G. means Gentleman; and the F. Farmer; you may say this, Guilty of publishing; but whether a libel or not, the jury do not find.

A Juror. Yes.

Mr. Erskine. I asked this question of your lordship in the hearing of the jury, whether, upon the verdict you desire them to find, the sedition which they have not found, will not be inferred by the Court if judgment is not arrested?

Mr. Justice Buller. Will you attend? Do you give it in this way, Guilty of the publication, but whether a libel or not, you do not find?

A Juror. We do not find it a libel, my lord; we do not decide upon it.

Mr. Erskine. They find it no libel.

Mr. Justice Buller. You see what is attempted to be done?

Mr. Erskine. There is nothing wrong attempted upon my part. I ask this once again in the hearing of the jury; and I desire an answer from your lordship as judge, whether or no, when I come to move in arrest of judgment, and the Court enter up judgment, and say it is a libel, whether I can afterwards say, in mitigation of punishment, the defendant was not guilty of publishing it with a seditious intent,

don, I am sure I mean nothing that is irregular: I understand the jury said, they only found that the dean published it.

One of the Jury. Yes.

Mr. Erskine. They only find that the dean published this pamphlet.

Mr. Broderick. They have not found that it is a libel of and concerning the king and his government.

Mr. Justice Buller. I asked them whether they were satisfied that the king meant the king of Great Britain, whether the letter G. meant Gentleman, and the letter F. meant Farmer; they say they are satisfied. Is there any other innuendo in the indictment?

Mr. Erskine. When the jury came in, they gave the very verdict that was given in the case of the King against Woodfall; they said guilty of publishing only. Gentlemen of the jury, do you mean that the word *only* shall stand part of your verdict?

One of the Jury. Certainly.

Mr. Justice Buller. Gentlemen, if you add the word *only*, it will be negating, or at least not finding the truth of the innuendos; that I understood you did not mean to do.

Mr. Erskine. That has the effect of a general verdict of Guilty. I desire your lordship, sitting here as judge, to record the verdict as given by the jury; if the jury depart from the word *only*, they alter their verdict.

Mr. Justice Buller. I will take their verdict as they mean to give it; it shall not be altered. Gentlemen, do you mean to find him guilty of publishing the libel?

One of the Jury. Of publishing the pamphlet; we don't decide upon its being a libel or not.

Mr. Justice Buller. And that the meaning of the innuendos is as stated in the indictment?

One of the Jury. Yes, certainly.

when he is found guilty of publishing it in manner and form as stated; and whether the jury are not thus made to find him guilty of sedition, when in the same moment they say they did not mean to do so. Gentlemen, do you find him guilty of sedition?

A Juror. We do not, neither one or the other.

Mr. Justice Buller. Take the verdict.

Associate. You say, Guilty of publishing; but whether a libel or not you do not find?

A Juror. That is not the verdict.

Mr. Justice Buller. You say, Guilty of publishing, but whether a libel or not you do not find; is that your meaning?

A Juror. That is our meaning.

One of the Counsel. Do you leave the intention to the Court?

A Juror. Certainly.

Mr. Cowper. The intention arises out of the record.

Mr. Justice Buller. And unless it is clear upon the record there can be no judgment upon it.

Mr. Bearcroft. You mean to leave the law where it is?

A Juror. Certainly.

Mr. Justice Buller. The first verdict was as clear as could be, they only wanted it to be confounded.

Mr. Erskine. Would you have the word *only* recorded?

One of the Jury. Yes.

Mr. Erskine. Then I insist that it shall be recorded.

Mr. Justice Buller. Mr. Erskine, sit down, or I shall be obliged to interpose in some other way.

Mr. Erskine. Your lordship may interpose in what manner you think fit.

Mr. Justice Buller. Gentlemen, if you say guilty of publishing *only*, the consequence is, that you negative the meaning of the particular words I have mentioned—that is the operation of the word *only*. In effect, you would give a verdict in words contrary to what you mean.

One of the Jury. How will it operate?

Mr. Justice Buller. If you say nothing more, but find him guilty of publishing, the question of law is open upon the record, and they have a right to apply first to the court of King's-bench to arrest the judgment; and if they are not satisfied with the opinion of that court, either party has a right to go to the House of Lords, and you find nothing more by that verdict but the simple fact; but if you find him guilty of publishing *only*, that verdict will not include the innuendos on the record.

One of the Jury. That is admitted.

Mr. Erskine. I desire to ask your lordship this question in the hearing of the jury, Whether if they find the verdict—Guilty of publishing, leaving out the word *only*, and on my application to arrest the judgment, the judgment shall not be arrested, but entered up in the King's-bench, whether the sedition does not stand recorded?

Mr. Justice Buller. No, it does not, unless the pamphlet be a libel in point of law.

Mr. Erskine. True. But can I say that the defendant did not publish it seditiously, if judgment is not arrested, but is entered in the record?

Mr. Justice Buller. Gentlemen, this is my satisfaction. If in what I am saying to you I am wrong in any instance, they have a right to have a new trial directly for asking. But I must tell you the law is this: If you find the defendant guilty of publishing, without saying any more, the question of libel or not is open to the consideration of the Court; but if you say he is guilty of publishing *only*, it is an incomplete verdict.

One of the Jury. We certainly mean to leave the question of libel or not to the consideration of the Court.

Mr. Erskine. Do you find the sedition?

One of the Jury. We give no verdict upon it.

Mr. Justice Buller. When you understand your verdict yourselves, I will take it in the manner you state it. If you say guilty of publishing *only*, there must be another trial, because the verdict will be imperfect.

One of the Jury. No, we did not say that;

we put the word *only* first—Guilty *only* of publishing.

Mr. *Erskine*. I desire, with great submission, the jury having said guilty *only* of publishing, that it may be so recorded.

Mr. Justice *Buller*. Whether you say guilty *only* of publishing, or guilty of publishing *only*, that amounts to the same thing. You may say this, "Guilty of publishing; but whether it is a libel or not you don't know," if that is your intention.

One of the Jury. That is our intention.

Mr. Justice *Buller*. Do you give your verdict in this way, "Guilty of publishing, but whether it is a libel or not, the jury don't know?"

One of the Jury. We don't find it a libel, my lord; we do not decide upon it.

Mr. *Erskine*. They find it no libel.

Mr. Justice *Buller*. See what is attempted to be done.

Mr. *Erskine*. There is no improper attempt upon my part. I ask this of your lordship, and desire an answer, as a judge, Whether or no, if, when I come to move in arrest of judgment, and the Court should enter up judgment, saying, that it is a libel, whether I can afterwards say, in mitigation of punishment, that the defendant did not publish it seditiously, when he is found guilty of publishing it in manner and form as stated? Therefore the jury are made to find a man guilty of sedition, when in the same moment they say they did not mean so to do. Gentlemen, do you find the dean guilty of sedition?

One of the Jury. We neither find the one nor the other.

Mr. *Price* (Associate). Do you say "Guilty of publishing, but whether a libel or not you do not find?"

Mr. Justice *Buller*. Is that your meaning?

One of the Jury. It is our meaning.

Mr. *Bearcroft*. All you mean is to leave the law where it is?

One of the Jury. That is all our meaning.

Mr. Justice *Buller*. The intention of the jury was from the first as clear as it could be, only they wanted to confound it.

The Associate recorded the Verdict, 'Guilty of publishing, but whether a libel or not the jury do not find.'

Of the farther Proceedings in this Case, the following Report is printed in the "Speeches of the Hon. Thomas Erskine:"

On the 8th of November, the second day of the ensuing term, Mr. Erskine moved the Court of King's-bench to set aside the verdict, for the misdirection of the Judge in the foregoing Charge to the Jury, and obtained a rule to show cause, why there should not be a new Trial.

Mr. ERSKINE'S SPEECH, in the Court of King's-Bench, on Monday the 8th of November 1784, on his Motion for a New Trial in the Case of the Dean of St. ASAPH.

Mr. Erskine began by stating to the Court the substance of the indictment against the dean of St. Asaph, which charged the publication with an intention to incite the people to subvert the government by armed rebellion;—the mere evidence of the publication of the Dialogue which the prosecutor had relied on to establish that malicious intention,—and the manner in which the defendant had, by evidence of his real motives for publishing it, as contained in the advertisement, rebutted the truth of the epithets charged by the indictment.

He then stated the substance of his speech to the jury at Shrewsbury, maintaining the legality of the Dialogue, the right of the jury to consider that legality, the injustice of a verdict affixing the epithet of *guilty* to a publication, without first considering whether the thing published contained any *guilt*; and, above all, the right which the jury unquestionably had (even upon the authority of those very cases urged against his client) to take the evidence into consideration, by which the defendant sought to exculpate himself from the seditious intention charged by the indictment.

He said that the substance of Mr. Jones's evidence was, *that it had been the intention of the Flintshire Committee to translate the Dialogue into Welsh*; that it was delivered to him to give to a Mr. Lloyd for that purpose; that the dean had just then received it from sir William Jones, and had not had time to read it before he delivered it to the witness. Some days after, Mr. Jones wrote to the dean, telling him, that he had collected the opinions of some gentlemen that the translation of it into Welsh might do harm: the dean's answer (WHO HAD NEVER THEN READ THE THING HIMSELF) was this, 'I am very much obliged to you for what you have communicated respecting the pamphlet; I should be exceedingly sorry to publish any thing that should tend to sedition.' Mr. Erskine contended that it was no admission on the dean's part that he thought it seditious, for he had never read it; but that his conduct showed that he was not seditiously inclined, since he stopped the publication even in compliance with the affected scruples of men whom he found out, on reading it, to be both wicked and ignorant; and the translation of it into Welsh was accordingly dropped.

Mr. Jones had farther said, that many persons afterwards, and particularly Mr. Fitzmaurice, made very free with the dean's character, for having entertained an idea of translating it into Welsh; it was publicly mentioned at the general meeting of the county,

and many opprobrious epithets being fastened on the Dialogue itself, the dean said, 'I am now called upon to show that it is not seditious, and I read it with a rope about my neck.'

Mr. Erskine then spoke as follows verbatim:

My lord, although this is not the place for any commentary on the evidence, I cannot help remarking, that this expression was strong proof that the dean did not think it seditious; for it is absurd to suppose that a man, feeling hurt at the accusation of sedition, should say, I am now called upon to show I am not seditious, and then proceed to read that aloud, which he *felt and believed* to contain sedition. The words which follow, 'I read it with a rope about my neck,' confirm this construction. The obvious sense of which is—I am now called upon to show that this Dialogue is not seditious;—it has never been read by those who call it so;—I will read it in its own vindication, and in mine—'I read it with a rope about my neck,' that is—if it be treasonable, as is asserted, it is a misdemeanor to read it; but I am so convinced of its innocence, that I read it notwithstanding—*meo periculo*.

The only part of Mr. Jones's evidence which remains, is as follows: I asked him, 'Did you collect, from what the dean said, that his opinion was, that the Dialogue was constitutional and legal?' His answer was: 'UNDOUBTEDLY. The dean said, Now I have read this, I do not think it so bad a thing; and I think we ought to publish it, in *vindication of the Committee*.' The question and answer must be taken in fairness together:—the witness was asked if he collected from the dean, that he thought it innocent and constitutional, and the first term in the answer is decisive; that the witness did not merely think it LESS CRIMINAL than it had been supposed, but *perfectly constitutional*; for he says, 'Undoubtedly I collected that he thought so.' The dean said, he thought he ought to publish it in vindication of the Committee; and it is repugnant to common sense, to believe that if the dean had supposed the Dialogue in *any degree* criminal, he would have proposed to publish it himself, in vindication of a former intention of publication by the Committee.—It would have been a confirmation, not a refutation of the charge.

The learned judge, after reciting the evidence, which I have just been stating (merely as a matter of form, since afterwards it was laid wholly out of the question), began by telling the jury, that he was astonished at a great deal he had heard from the defendant's counsel; for that he did not know any one question of law more thoroughly settled than the doctrine of libels, as he proposed to state it to them:—it then became *my turn* to be astonished. Mr. Justice Buller then proceeded to state, that what had fallen from me, namely, that the jury had a right to consider the

libel, was only the language of a party in this country; but that the contrary of their notions was so well established, that no man who meant well, could doubt concerning it.*

It appeared afterwards that Mr. Lee and myself were members of this party; though my friend was charged with having deserted his colours; as he was the first authority that was cited against me; and what rendered the authority more curious, the learned judge mentioned, that he had delivered his *dictum* at Guildhall as counsel for a plaintiff, when these doctrines might have been convenient for the interests of his client, and therefore no evidence of his opinion. This quotation, however, had perhaps more weight with the jury than all that followed, and certainly the novelty of it entitled it to attention.

I hope, however, the sentiments imputed to my friend were not necessary upon that occasion; if they were, his client was betrayed: for I was myself in the cause alluded to; and I take upon me to affirm, that Mr. Lee did not, directly or indirectly, utter any sentiment in the most remote degree resembling that which the learned judge was pleased to impute to him for the support of his charge. This I shall continue to affirm, notwithstanding the judge's declaration to the contrary, until I am contradicted by Mr. Lee himself, who is here to answer me if I misrepresent him. [Mr. Lee confirmed Mr. Erskine by remaining silent.]

The learned judge then said, that as to whether the Dialogue, which was the subject of the prosecution, was criminal or innocent, he should not even hint an opinion; for that if he should declare it to be no libel, and the jury, adopting that opinion, should acquit the defendant, he should thereby deprive the prosecutor of his right of appeal upon the record; which was one of the dearest birthrights of the subject.—That the law was equal as between the prosecutor and defendant; and that there was no difference between criminal and civil cases.—I am desirous not to interrupt the state of the trial by observations; but cannot help remarking, that justice to the prosecutor as standing exactly in equal scales with a prisoner, and in the light of an adverse party in a civil suit, was the first reason given by the learned judge, why the jury should at all events find the defendant guilty, without investigating his guilt. This was telling the jury in the plainest terms, that they could not find a general verdict in favour of the defendant, without an act of injustice to the prosecutor, who would be shut out by it from his writ of error, which he was entitled to by law, and which was the best birthright of the subject.—It was, therefore, an absolute denial of the right of the jury, and of the judge also, as no right can exist, which necessarily works a wrong in

* See p. 945 of this Volume.

the exercise of it. If the prosecutor had by law a right to have the question on the record, the judge and jury were both tied up at the trial; the one from directing, and the other from finding a verdict which disappointed that right.

If the prosecutor had a right to have the question upon the record, for the purpose of appeal, by the jury confining themselves to the fact of publication, which would leave that question open, it is impossible to say, that the jury had a right likewise to judge of the question of libel, and to acquit the defendant, which would deprive the prosecutor of that right. There cannot be contradictory rights, the exercise of one destroying and annihilating the other. I shall discuss this new claim of the prosecutor upon a future occasion; for the present, I will venture to say, that no man has a right,—a property,—or a beneficial interest in the punishment of another. A prosecution at the instance of the crown has public justice alone, and not private vengeance, for its object:—in prosecutions for murder, and felonies and most other misdemeanors, the prosecutor can have no such pretence, since the record does not comprehend the offence.—Why he should have it in the case of a libel, I would gladly be informed.

The learned judge then stated your lordship's uniform practice, in trying libels, for eight and twenty years,—the acquiescence of parties and their counsel, and the ratification of the principle, by a judgment of the court, in the case of the King against Woodfall.—He likewise cited a case, which he said, happened within a year or two of the time of the Seven Bishops, in which a defendant, indicted for a seditious libel, desired it might be left to the jury, whether the paper was seditious; but that the court said, the jury were to decide upon the *fact*; and that if they found him guilty of the *fact*, the court would afterwards decide the question of libel. The learned judge then cited the maxim, *ad questionem facti respondent juratores, ad questionem juris respondent judices*, and said, that maxim had been confirmed in the sense he put on it in the very case of Bushell, on which I had relied so much for the contrary position.

The learned judge, after honouring some of my arguments with answers, and saying again, in stronger terms than before, that there was no difference between the province of the jury in civil and criminal cases, notwithstanding the universality of the general issue instead of special pleadings, told the jury, that if they believed that G. meant Gentleman, and F. meant Farmer, the matter for their consideration was reduced to the simple fact of publication.

The Court will please to recollect, that the advertisements, explaining the dean's sentiments concerning the pamphlet, and his motives for the publication of it in English, after

it had been given up in Welsh, had been read in evidence to the jury:—that Mr. Jones had been likewise examined to the same effect, to induce the jury to believe the advertisement to have been prefixed to it *bonâ fide*, and to have spoken the genuine sentiments and motives of the publisher:—and that several gentlemen, of the first character in the dean's neighbourhood in Wales, had been called to speak to his general peaceable deportment, in order to strengthen that proof, and to resist the assent of the jury to the principal averment in the information, viz. *That the defendant published, intending to excite a revolution in the government, by armed rebellion.* Whether all this evidence, given for the defendant, was adequate to its purpose, is foreign to the present enquiry.—I think it was.—But my objection is, that no part of it was left to the consideration of the jury, who were the judges of it. As to the advertisement, which was part of the pamphlet itself, the learned judge never even named it, but as part of the prosecutor's proof of the publication, though I had read it to the jury, and insisted upon it as sufficient proof of the defendant's intention, and I had called Mr. Jones to confirm the construction I put upon it.

As to Mr. Jones's testimony, Mr. Justice Buller said, Whether his evidence will or 'will not operate in mitigation of punishment, is not a question for me to give an opinion upon.' And he farther declared, that if the jury were satisfied as to the fact of the publication, they were bound to find the defendant guilty. As to the evidence of character, it was disposed of in the same manner. Mr. Justice Buller said, 'As to the several witnesses who have been called to give Mr. Shipley the character of a quiet and peaceable man, not disposed to stir up sedition, THAT cannot govern the present question; for the question you are to decide on is, Whether he be, or be not, guilty of publishing this pamphlet.'

This charge, therefore, contained an express exclusion of the right of the jury to consider the evidence offered by the defendant, to rebut the inference of sedition arising from the act of publication.

The learned judge repeated the same doctrine at the end of his charge; entirely removing from the jury the consideration of the whole of the defendant's evidence, and concluded by telling them, 'That if they were satisfied as to the truth of the innuendos and the fact of publication, they were bound to find the defendant guilty.' The jury retired to consider of this charge, and brought in a verdict, 'Guilty of publishing ONLY.' The learned judge refused to record it, and I am ready to admit that it was an imperfect verdict.—He was not bound to receive it; but when he saw the jury had no doubt of the truth of the innuendos, and that therefore the word ONLY could not apply to a negation of

them; he should have asked them whether they believed the defendant's witnesses, and meant to negative the seditious purpose? It was the more his duty to have asked that question, as several of the jury themselves said that they gave no opinion concerning seditious intention: a declaration decisive in the defendant's favour, who had gone into evidence to rebut the charge of intention, and of which the judge, who, in the humane theory of the English law, ought to be counsel for the prisoner, should at the least have taken care to obtain an explanation from the jury, by asking them what *their* opinion was, instead of arguing upon the principle of *his own* charge, what it necessarily *must be*, if the innuendos were believed; a position which gave the go-by to the difficulties of the jury. Their intention to exclude the seditious purpose was palpable; and under such circumstances, the excellent remark of the great Mr. Justice Foster never should be forgotten: 'When the rigour of the law bordereth upon injustice, mercy ought to interpose in the administration. It is not the part of judges to be perpetually hunting after forfeitures, while the heart is free from guilt. They are the ministers of the crown, appointed for the ends of public justice, and ought to have written upon their hearts the obligation which his majesty is under, to cause law and justice in mercy to be executed in all his judgments.' This solemn obligation is no doubt written upon the hearts of all the judges; but it is unfortunate when it happens to be written in so illegible a hand that a jury cannot possibly read it.

To every part of the learned judge's directions, I have objections which appear to me to be weighty. I will state them distinctly, and in their order, as shortly, or as much at large, as the Court shall require of me.

The first proposition which I mean to maintain as a foundation for a new trial, is this:

Then when a bill of indictment is found, or an information filed, charging any crime or misdemeanor known to the law of England, and the party accused, puts himself upon the country by pleading the general issue, Not Guilty;—the jury are **GENERALLY** charged with his deliverance from that **CRIME**, and not **SPECIALLY** from the fact or facts, in the commission of which the indictment or information charges the crime to consist; much less from any single fact to the exclusion of others charged upon the same record.

Secondly, I mean to maintain that no act which the law in its general theory holds to be criminal, constitutes in itself a crime abstracted from the mischievous intention of the actor; and that the intention, even where it becomes a simple inference of reason from a fact or facts established, may, and ought to be, collected by the jury with the judge's assistance; because the act charged, though established as a fact in a trial on the general

issue, does not necessarily and unavoidably establish the criminal intention by any **ABSTRACT** conclusion of law; the establishment of the fact being still no more than *evidence* of the crime, but not the **CRIME ITSELF**, unless the jury render it so themselves by referring it voluntarily to the Court by special verdict.

I wish to explain this proposition.

When a jury can discover no other reasonable foundation for judging of the intention, than the inference from the act charged, and doubting what that inference ought to be in law, refer it to the court by special verdict, the intention becomes by that inference a question of law; but it only becomes so by this voluntary declaration of the jury, that they mean the party accused shall stand or fall by the abstract legal conclusion from the act charged, from their not being able to decipher his purpose by any other medium.

But this discretionary reference to the court upon particular occasions, which may render it wise and expedient, does not abridge or contract the power or the duty of a jury, under other circumstances, to withhold their consent from the intention being taken as a legal consequence of the act; even when they have had no evidence capable of being stated on the face of a special verdict, they may still find a general verdict, founded on their judgment of the crime, and the intention of the party accused of it.

When I say, that the jury **MAY** consider the crime, and the intention, I desire to be understood to mean, not merely that they have the **POWER** to do it without controul or punishment, and without the possibility of their acquittal being disannulled by any other authority (for that no man can deny); but I mean, that they have a constitutional legal **RIGHT** to do so; a right, in many cases, proper to be exercised, and intended by the wise founders of the English government to be a protection to the lives and liberties of Englishmen, against the encroachments and perversions of authority in the hands of fixed magistrates.

The establishment of both, or either of these two propositions, must entitle me to a new trial; for if the jury, on the general issue, had a strictly legal jurisdiction to judge of the libellous nature, or seditious tendency of the paper (taking that nature or tendency to be law or fact), then the judge's direction is evidently unwarrantable. If he had said, As libel or no libel requires a legal apprehension of the subject, it is my duty to give you my opinion; and had then said, I think it is a libel, and had left the jury to find it one under his directions, or otherwise, at their discretion, and had at the same time told them that the criminal intention was an inference from the publication of a libel, which it was their duty to make,—or if, admitting their right *in general*, he had advised a special verdict in the *particular instance*, I

should have stood in a very different situation; but he told the jury (I take the general result of his whole charge), that they had no jurisdiction to consider of the libel, or of the intention; both being beyond the compass of their oath.

Mr. Bearcroft's position was very different; he addressed the jury with the honest candour of a judge, without departing from the proper zeal of an advocate. He said to the jury—I cannot honour him more than by repeating his words; they will long be remembered by those who respect *him*, and love the constitution:—

‘There is no law in this country,’ said Mr. Bearcroft, (‘thank God, there is not; for it would not be a free constitution if there were,’ that prevents a jury, if they choose it, from finding a general verdict; I admit it; I rejoice in it; I admire and reverence the principle, as the palladium of the constitution. But does it follow, because a jury *may* do this, that they *must* do it—that they *ought* to do it?’ He then took notice of the case of the Seven Bishops, and honoured the jury for exercising this right on that occasion.

Mr. Bearcroft's position is therefore manly and intelligible; it is simply this: It is the excellence of the English constitution that you may exert this power when you think the season warrants the exercise of it. The case of the Seven Bishops was such a season, this is not.

But Mr. Justice Buller did by no means ratify this doctrine. It is surely not too much to expect that the judge, who is supposed to be counsel for the prisoner, should keep within the bounds of the counsel for the crown, when a crown prosecution is in such hands as Mr. Bearcroft's.—The learned judge, however, told the jury from his own authority, and supported it with much history and observation, and many quotations, that they had nothing to do at all with those questions, their jurisdiction over which Mr. Bearcroft had rejoiced in as the palladium of the constitution.—He did not tell them this by way of advice, as applied to the particular case before them;—he did not (admitting their right) advise them to forbear the exercise of it in the *particular instance*:—no! the learned judge fastened an UNIVERSAL ABSTRACT limitation on the province of the jury to judge of the crime, or the criminal purpose of the defendant.—His whole speech laid down this limitation UNIVERSALLY, and was so understood by the jury; he told them these questions were beyond the compass of their oaths, which was confined to the decision of the fact; and he drove them from the law by the terrors of conscience.—The conclusion is short.

If the jury have no jurisdiction by the law of England, to examine the question of libel, and the criminality or innocence of the intention of the publisher, then the judge's charge was right: but if they have jurisdiction, and if their having it be the palladium of the go-

vernment, it must be wrong. For how, in common sense, can that power in a jury be called the palladium of the constitution, which can never be exerted, but by a breach of those rules of law, which the same constitution has established for their government?

If in *no case* a jury can entertain such a question without stepping beyond their duty, it is an affront to human reason to say, that the safety of the government depends on men's violating their oaths in the administration of justice. If the jury *have* that right, there is no difference between restricting the exercise of it by the terrors of imprisonment, or the terrors of conscience.—If there be any difference, the second is the most dangerous; an upright jurymen, like Bushell, would despise the first, but his very honesty would render him the dupe of the last.

The two former propositions on which my motion is founded, applying to all criminal cases;—and a distinction having always been taken between libels and other crimes by those who support the doctrines I am combating;—I mean therefore to maintain, that an indictment for a libel, even where the slander of an individual is the object of it (which is capable of being measured by precedents of justice), forms no exception to the jurisdiction or duties of juries, or the practice of judges in other criminal cases:—that the argument for the difference, viz. because the whole crime always appears upon the record, is false in fact, and, even if true, would form no solid or substantial difference in law.

I said, that the record does not always contain sufficient for the court to judge of a libel. The crown may indict *part* of a publication, and omit the rest, which would have explained the author's meaning, and rendered it harmless: it has done so here; the advertisement is part of the publication, but no part of the record.

The famous case put by Algernon Sidney, is the best illustration that can possibly be put.

Suppose a bookseller having published the Bible, was indicted in these words, ‘That intending to promote atheism and irreligion, he had blasphemously printed and published the following false and profane libel,—‘There is no God.’—The learned judge said, that a person unjustly accused of publishing a libel might always demur to the indictment: this is an instance to the contrary; on the face of such a record, by which the demurrer can alone be determined, it contains a complete criminal charge. The defendant therefore would plead Not guilty, and go down to trial, when the prosecutor of course could only produce the Bible to support the charge, by which it would appear to be only a verse in the Proverbs of Solomon, viz. ‘The fool has said in his heart, There is no God,’ and that the context had been omitted to constitute the libel. The jury, shocked at the imposition, would only wait the judge's direction.

to acquit; but consistently with the principles which have governed in the dean of St. Asaph's trial, how could he be acquitted?—The judge must say, You have nothing to do but with the fact, that the defendant published *the words laid in the information*.

But, says the adversary, the distinction is obvious; reading the sacred context to the jury would enable them to negative the innuendos which are within their province to reject, and which being rejected, would destroy the charge. The answer is obvious: *such an indictment* would contain no innuendo on which a negative could be put: for if the record charged that the defendant blasphemously published that there was no God, it would require no innuendo to explain it.

Driven from that argument, the adversary must say, that the jury by the context would be enabled to negative the epithets contained in the introduction, and could never pronounce it to be blasphemous.—But the answer to that is equally conclusive; for it was said in the case of the King against Woodfall, that these epithets were mere formal inferences of law, from the fact of publishing that which on the record was a libel.

When the defendant was convicted, it could not appear to the court, that the defendant only published the Bible.—The court could not look off the record, which says, that the defendant blasphemously published that there was no God. The judge, maintaining these doctrines, would not, however, forget the respect due to the *religion* of his country, though the law of it had escaped him. He would tell the jury, that it should be remembered in mitigation of punishment; and the honest bookseller of Paternoster Row, when he came up in custody to receive judgment, would be let off for a small fine, upon the judge's report, that he had only published a new copy of the Bible; but not till he had been a month in the King's-bench prison, while this knotty point of divinity was in discussion. This case has stood invulnerable for above 100 years, and it remains still for Mr. Bearcroft to answer.

I said, in opening this proposition, that even if it were true that the record did contain the whole charge, it would form no substantial difference in law; and I said so, because, if the position be, that the court is always to judge of the law, when it can be made to see it upon the record, no case can occur, in which there could be a general verdict, since the law might be always separated from the facts by finding the latter specially, and referring them to the judgment of the court. By this mode of proceeding, the crime would be equally patent upon the record as by indictment; and if it be patent there, it matters not whether it appears on the front or the back of the parchment; on the first by the indictment, or on the last by the postea.

People who seek to maintain this doctrine, do not surely see to what length it would go;

for if it can be maintained that wherever, as in the case of a libel, the crime appears upon the record, the court alone, and not the jury, ought to judge; it must follow, that where a writing is laid as an overt act of high treason (which it may be when coupled with publication), the jury might be tied down to find the fact, and the judges of the crown might make state criminals at their discretion, by finding the law.

The answer in these mild and independent days of judicature is this, (Mr. Bearcroft indeed gave it at the trial): Why may not judges be trusted with our liberties and lives, who determine upon our property and every thing that is dear to us?

The observation was plausible for the moment, and suited to his situation, but he is too wise a man to subscribe to it. Where is the analogy between ordinary civil trials between man and man, where judges can rarely have an interest, and great State prosecutions, where power and freedom are weighing against each other, the balance being suspended by the servants of the executive magistrate? If any man can be so lost to reason as to be a scepticon such a subject, I can furnish him with a cure from an instance directly in point: let him turn to the 199th page of the celebrated Foster, to the melancholy account of Peachum's indictment of treason, for a manuscript sermon found in his closet, never published, reflecting on king James the first's government.* The case was too weak to trust without management, even by the sovereign to the judges of those days; it was necessary first to sound them; and the great (but on that occasion the contemptible) lord Bacon was fixed on for the instrument; and his letter to the king remains recorded in history, where, after telling him his successful practice on the puisne judges, he says, that when in some dark manner he has hinted this success to lord Coke, he will not choose to remain singular.

When it is remembered with what comprehensive talents and splendid qualifications lord Bacon was gifted, it is no indecency to say, that all judges ought to dread a trust which the constitution never gave them, and which human nature has not always enabled the greatest men to fulfil.†

If the court shall grant me a rule, I mean to contend, 4thly, that a seditious libel contains no question of law; but supposing the court should deny the legality of all these propositions, or, admitting their legality, resist the conclusion I have drawn from them, then the last proposition, in which I am supported even by all those authorities on which the learned judge relies for the doctrines contained in this charge, is this:

Proposition 5. That in all cases where the

* See Vol. 2, p. 869.

† See the Proceedings against Lord Bacon, Vol. 2, p. 1087.

mischievous intention (which is agreed to be the essence of the crime) cannot be collected by simple inference from the fact charged, because the defendant goes into evidence to rebut such inference, the intention becomes then a pure unmixed question of fact, for the consideration of the jury.

I said the authorities of the King against Woodfall and Almon were with me. In the case of Rex against Woodfall,* 5th Burrow, lord Mansfield expressed himself thus: 'Where an act in itself indifferent, becomes criminal, when done with a particular intent, THERE, the intent must be proved and found. But where the act is itself unlawful, as in the case of a libel, the PROOF of justification or excuse lies on the defendant; and in failure thereof, the law implies a criminal intent.'—Most luminously expressed to convey this sentiment, viz. That when a man publishes a libel, and has nothing to say for himself,—no explanation or exculpation,—a criminal intention need not be proved: it is an inference of common sense, not of law. But the publication of a libel does not conclusively show criminal intent, but is only an implication of law, in failure of the defendant's proof. Lord Mansfield immediately afterwards in the same case explains this farther: 'There may be cases where the publication may be justified or excused as lawful OR INNOCENT; FOR NO ACT WHICH IS NOT CRIMINAL, though the paper BE A LIBEL, can amount to SUCH a publication of which a defendant ought to be found guilty.' But no question of that kind arose at the trial (i. e. trial of Woodfall). Why?—Lord Mansfield immediately says why, 'Because the defendant called no witnesses;' expressly saying, that the publication of a libel is not in itself a crime, unless the intent be criminal; and that it is not merely in mitigation of punishment, but that such a publication does not warrant a verdict of guilty, if the seditious intention be rebutted by evidence.

In the case of the King against Almon,† a magazine containing one of Junius's Letters, was sold at Almon's shop; there was proof of that sale at the trial. Mr. Almon called no witnesses, and was found guilty. To found a motion for a new trial, an affidavit was offered from Mr. Almon, that he was not privy to the sale, nor knew that his name was inserted as a publisher, and that this practice of booksellers being inserted as publishers by their correspondents without notice, was common in the trade.

Lord Mansfield said, 'Sale of a book in a bookseller's shop, is *prima facie* evidence of publication by the master, and the publication of a libel is *prima facie* evidence of criminal intent: it stands good till answered by the defendant: it must stand till contradicted or explained; and if not contradicted, explained, or exculpated, BECOMES tan-

amount to conclusive when the defendant calls no witnesses.'

Mr. Justice Aston said, '*Prima facie* evidence not answered is sufficient to ground a verdict upon; if the defendant had a sufficient excuse, he might have proved it at the trial: his having neglected it where there was no surprise, is no ground for a new one.' Mr. Justice Willes and Mr. Justice Ashhurst agreed upon those express principles.

These cases declare the law beyond all controversy to be, that publication, even of a libel, is no *conclusive* proof of guilt, but only *prima facie* evidence of it till answered; and that if the defendant can show that his intention was not criminal, he completely rebuts the inference arising from the publication, because, though it remains true that he published, yet it is, according to lord Mansfield's express words, not such a publication of which a defendant ought to be found guilty. Apply Mr. Justice Buller's summing up to this law, and it does not require even a legal apprehension to distinguish the repugnancy.

The advertisement was proved to convince the jury of the dean's motive for publishing; Mr. Jones's testimony went strongly to aid it; and the evidence to character, though not sufficient in itself, was admissible to be thrown into the scale.—But not only no part of this was left to the jury, but the whole of it was expressly removed from their consideration; although in the cases of Woodfall and Almon, it was as expressly laid down to be within their cognizance; and a complete answer to the charge, if satisfactory to the minds of the jurors.

In support of the learned judge's charge, there can be therefore but two arguments:—either that the defendant's evidence, namely, the advertisement;—Mr. Jones's evidence in confirmation of its having been published *bona fide*; and the evidence to character to strengthen that construction, were not sufficient proof that the dean believed the publication meritorious, and published it in vindication of his honest intentions;—or else, that, even admitting it to establish that fact, it did not amount to such an exculpation as to be evidence on not guilty, so as to warrant a verdict.—I give the learned judge his choice of the alternative.

As to the first, viz. Whether it showed *honest intention* in point of fact; that surely was a question for the jury.—If the learned judge had thought it was not sufficient evidence to warrant the jury's believing that the dean's motives were such as he had declared them, he should have given his opinion of it as a point of evidence, and left it there.—I cannot condescend to go farther; it would be ridiculous to argue a self-evident proposition.

As to the second, That even if the jury had believed from the evidence, that the dean's intention was wholly innocent, it did not amount to an excuse, and therefore should

* Vol. 20, p. 897.

† Vol. 20, p. 903.

not have been left to them.—Does the learned judge mean to say, that if the jury had declared, ‘ We find that the dean published this pamphlet, whether a libel or not we do not find; and we find farther, that believing it in his conscience to be meritorious and innocent, he *bonâ fide* published it with the prefixed advertisement, as a vindication of his character from the seditious intentions, and not to excite sedition:’ does the judge mean to say, that on such a special verdict he could have pronounced a criminal judgment? —If, on making the report, he says yes, I shall have leave to argue it.

If he says no, then why was the consideration of that evidence, by which those facts might have been found, withdrawn from the jury, even after they had brought in a verdict, Guilty of publishing *only*, which, in the case of the King against Woodfall, was only said not to negative the criminal intention, because that defendant had called no witnesses? Why did he confine his enquiries to the innuendos? and finding the jury agreed upon them, why did he declare them to be bound to affix the epithet of Guilty, without asking them if they believed the defendant’s evidence to rebut the criminal inference? Some of the jury meant to negative the criminal inference, by adding the word *only*, and all would have done it, if they had thought themselves at liberty to enter upon the evidence of the advertisement.—But *they were told expressly that they had nothing to do with the consideration of that evidence, which, if believed, would have warranted that verdict.* The conclusion is evident;—if they had a right to consider it, and their consideration might have produced such a verdict, and if such a verdict would have been an acquittal, it must be a misdirection.

It seems to me therefore, that, to support the learned judge’s directions, the very cases relied on in support of them must be abandoned; since, even upon their authority, the criminal intention, though a legal inference from the fact of publishing, in the absence of proof from the defendant, becomes a question of fact, when he offers proof in exculpation to the jury;—the foundation of my motion therefore is clear.

I first deny the authority of these modern cases, and rely upon the rights of juries, as established by the ancient law and custom of England, and hold that the judge’s charge confines that *right*, and its exercise, though not the *power* in the jury to find a general verdict of acquittal.

I assert farther, that, whatever were the judge’s *intentions*, the jury could not but collect that restriction from his charge;—that all free agency was therefore destroyed in them, from respect to authority, in opposition to reason;—and that therefore the defendant has had no trial which this Court can possibly sanction by supporting the verdict. But if the Court should be resolved to support its

own late determinations, I must content myself even with *their* protection; they are certainly not the shield with which, in a contest for freedom, I should wish to combat, but they are sufficient for my protection: it is impossible to reconcile the learned judge’s directions with any of them.

My lord, I shall detain the Court no longer at present.—The people of England are deeply interested in this great question; and though they are not insensible to that interest, yet they do not feel it in its real extent. The dangerous consequences of the doctrines established on the subject of libel are obscured from the eyes of many, from their not feeling the immediate effects of them in daily oppression and injustice:—but that security is temporary and fallacious; it depends upon the convenience of government for the time being, which may not be interested in the sacrifice of individuals, and in the temper of the magistrate who administers the criminal law, as the head of this Court. I am one of those who could almost hush myself by these reflections from the apprehension of *immediate* mischief, even from the law of libel laid down by your lordship, if you were always to continue to administer it yourself.—I should feel a protection in the gentleness of your character; in the love of justice which its own intrinsic excellence forces upon a mind enlightened by science, and enlarged by liberal education, and in that dignity of disposition which grows with the growth of an illustrious reputation, and becomes a sort of pledge to the public for security; but such a security is as a shadow which passeth away;—you cannot, my lord, be immortal, and how can you answer for your successor? if you maintain the doctrines which I seek to overturn, you render yourself responsible for all the abuses that may follow from them to our latest posterity.

My lord, whatever may become of the liberties of England, it shall never be said that they perished without resistance, when under my protection.

On this motion the Court granted a rule to shew cause why there should not be a new trial—and cause was accordingly shown by the counsel for the crown on the 15th of November following; their arguments were taken in short-hand by Mr. Blanchard, but were never published;—they relied, however, altogether upon the authorities cited by Mr. Justice Buller, in his Charge to the Jury, and upon the uniform practice of the court of King’s-bench, for more than fifty years.

The following Speech, in support of the new Trial, which was taken at the same time by Mr.

Blanchard, was soon after published by Mr. Erskine's authority, in order to attract the attention of the public to the Libel Bill, which Mr. Fox was then preparing for the consideration of parliament.

The Hon. Thomas Erskine :*

I am now to have the honour to address myself to your lordship in support of the rule granted to me by the Court upon Monday last; which, as Mr. Bearcroft has truly said, and seemed to mark the observation with peculiar emphasis, is a rule for a new trial. Much of my argument, according to his notion, points another way; whether its direction be true, or its force adequate to the object, it is now my business to show.

In rising to speak at this time, I feel all the advantage conferred by the reply over those whose arguments are to be answered; but I feel a disadvantage likewise which must suggest itself to every intelligent mind.—In following the objections of so many learned

* In the Edinburgh Review (vol. 16, p. 202) of 'Lord Erskine's Speeches,' the eloquent and powerful writer thus expresses himself:

"In these volumes, we have a complete body of the law of libel, and a most perfect history of its progress, down to the Libel Bill of Mr. Fox, which owed its origin, indeed, to the doubts and difficulties that arose during the prosecution (is there not an error in the first syllable?) of the dean of St. Asaph. The argument on the rights of juries, as connected with that case, affords the clearest exposition of the subject, and is, in itself, by far the most learned commentary on the nature of that inestimable mode of trial, which is any where to be found. Mr. Fox's bill is merely declaratory of the principles, which were laid down in this argument with unrivalled clearness, and enforced with a power of reasoning which none ever denied to this great advocate, except in the moment when, dazzled by the astonishing powers of his language, they were tempted to fancy that so rare a union of different qualities was not in nature; and to doubt whether such eloquence and fire—so lively an imagination, and so great warmth of passions, were compatible with the faculties of close reasoning and nice discrimination. As connected, then, with the history of jury trial—as laying down its principles—as furnishing the groundwork of Mr. Fox's famous bill—and as having, in point of fact, given occasion to that bill, we view the speeches for dean Shipley, which contain a most complete history of that case, as the most important part of this collection. We need scarcely add, that the trial by jury is here only viewed in its relation to the law of libel; but, to administer this law, is, beyond all comparison, the most important office of juries,—the one in which the excellence of that institution is most conspicuous and indisputable, and, independent of which, the objections to it would be neither few nor light."

Of this speech of lord Erskine I have been informed that the great Mr. Fox, who introduced the stat. 32 Geo. 3, c. 60, repeatedly declared that he thought it the finest argument in the English language.

persons, offered under different arrangements upon a subject so complicated and comprehensive, there is much danger of being drawn from that method and order, which can alone fasten conviction upon unwilling minds, or drive them from the shelter which ingenuity never fails to find in the labyrinth of a desultory discourse.

The sense of that danger, and my own inability to struggle against it, led me originally to deliver to the Court certain written and maturely considered propositions, from the establishment of which I resolved not to depart, nor to be removed, either in substance or in order, in any stage of the proceedings, and by which I must therefore this day unquestionably stand or fall.

Pursuing this system, I am vulnerable two ways, and in two ways only. Either it must be shown that my propositions are not valid in law; or, admitting their validity, that the learned judge's charge to the jury at Shrewsbury was not repugnant to them: there can be no other possible objections to my application for a new trial. My duty to-day is therefore obvious and simple; it is, first, to re-maintain those propositions; and then to show, that the charge delivered to the jury at Shrewsbury was founded upon the absolute denial and reprobation of them.

I begin, therefore, by saying again in my own original words, that when a bill of indictment is found, or an information filed, charging any crime or misdemeanor known to the law of England, and the party accused puts himself upon the country by pleading the general issue,—Not Guilty;—the jury are GENERALLY charged with his deliverance from that CRIME, and not SPECIALLY from the *fact or facts*, in the commission of which the indictment or information charges the crime to consist; much less from any single fact, to the exclusion of others charged upon the same record.

Secondly, that no act, which the law in its general theory holds to be criminal, constitutes in itself a crime, abstracted from the mischievous intention of the actor; and that the intention, even where it becomes a simple inference of legal reason from a fact or facts established, may and ought to be collected by the jury, with the judge's assistance; because the act charged, though established as a fact in a trial *on the general issue*, does not necessarily and unavoidably establish the criminal intention by any ABSTRACT conclusion of law: the establishment of the fact being still no more than full evidence of the crime, but not the crime itself; unless the jury render it so themselves, by referring it voluntarily to the court by special verdict.

These two propositions, though worded with cautious precision, and in technical language, to prevent the subtlety of legal disputation in opposition to the plain understanding of the world, neither do nor were intended to convey any other sentiment than

this: viz. that in all cases where the law either directs or permits a person accused of a crime to throw himself upon a jury for deliverance, by pleading *generally* that he is not guilty; the jury, thus legally applied to, may deliver him from the accusation by a general verdict of acquittal founded (as in common sense it evidently must be) upon an investigation as general and comprehensive as the charge itself from which it is a general deliverance.

Having said this, I freely confess to the court, that I am much at a loss for any farther illustration of my subject; because I cannot find any matter by which it might be farther illustrated, so clear, or so indisputable, either in fact or in law, as the very proposition itself which upon this trial has been brought into question.—Looking back upon the ancient constitution, and examining with painful research the original jurisdictions of the country, I am utterly at a loss to imagine from what sources these novel limitations of the rights of juries are derived. Even the bar is not yet trained to the discipline of maintaining them.—My learned friend Mr. Bearcroft solemnly abjures them:—he repeats to-day what he avowed at the trial, and is even jealous of the imputation of having meant less than he expressed; for when speaking this morning of the *right* of the jury to judge of the whole charge, your lordship corrected his expression, by telling him he meant the *power*, and not the *right*; he caught instantly at your words, disavowed your explanation; and, with a consistency which does him honour, declared his adherence to his original admission in its full and obvious extent.—‘I did not mean,’ said he, ‘merely to acknowledge that the jury have the *power*; for their power nobody ever doubted; and, if a judge was to tell them they had it not, they would only have to laugh at him, and convince him of his error, by finding a general verdict which must be recorded: I meant, therefore, to consider it as a *right*, as an important privilege, and of great value to the constitution.’

Thus Mr. Bearcroft and I are perfectly agreed; I never contended for more than he has voluntarily conceded.—I have now his express authority for repeating, in my own former words, that the jury have not merely the *power* to acquit, upon a view of the whole charge, without controul or punishment, and without the possibility of their acquittal being annulled by any other authority; but that they have a *constitutional, legal right to do it*; a *right fit to be exercised*; and intended by the wise founders of the government, to be a protection to the lives and liberties of Englishmen, against the encroachments and perversions of authority in the hands of fixed magistrates.

But this candid admission on the part of Mr. Bearcroft, though very honourable to himself, is of no importance to me; since,

from what has already fallen from your lordship, I am not to expect a ratification of it from the court; it is therefore my duty to establish it.—I feel all the importance of my subject, and nothing shall lead me to-day to go out of it.—I claim all the attention of the court, and the right to state every authority which applies in my judgment to the argument, without being supposed to introduce them for other purposes than my duty to my client, and the constitution of my country, warrants and approves.

It is not very usual, in an English court of justice, to be driven back to the earliest history and original elements of the constitution; in order to establish the first principles which mark and distinguish English law:—they are always assumed, and, like axioms in science, are made the foundations of reasoning without being proved.—Of this sort our ancestors, for many centuries, must have conceived the right of an English jury to decide upon every question which the forms of the law submitted to their final decision; since, though they have immemorially exercised that supreme jurisdiction, we find no trace in any of the ancient books of its ever being brought into question.—It is but as yesterday, when compared with the age of the law itself, that judges, unwarranted by any former judgments of their predecessors, without any new commission from the crown, or enlargement of judicial authority from the legislature, have sought to fasten a limitation upon the rights and privileges of jurors, totally unknown in ancient times, and palpably destructive of the very end and object of their institution.

No fact, my lord, is of more easy demonstration; for the history and laws of a free country lie open even to vulgar inspection.

During the whole Saxon æra, and even long after the establishment of the Norman government, the whole administration of justice, criminal and civil, was in the hands of the people, without the controul or intervention of any judicial authority, delegated to fixed magistrates by the crown.—The tenants of every manor administered civil justice to one another in the court-baron of their lord; and their crimes were judged of in the feet, every suitor of the manor giving his voice as a juror, and the steward being only the registrar,—and not the judge. On appeals from these domestic jurisdictions to the county-court, and to the torn of the sheriff, or in suits and prosecutions originally commenced in either of them, the sheriff’s authority extended no farther than to summon the jurors, to compel their attendance, ministerially to regulate their proceedings, and to enforce their decisions; and even where he was specially empowered by the king’s writ of *justices* to proceed in causes of superior value, no *judicial* authority was thereby conferred upon himself, but only a more enlarged jurisdiction on the JURORS, who were to try the cause mentioned in the writ.

It is true that the sheriff cannot now intermeddle in pleas of the crown; but with this exception, which brings no restrictions on juries, these jurisdictions remain untouched at this day:—intricacies of property have introduced other forms of proceeding, but the constitution is the same.

This popular judicature was not confined to particular districts, or to inferior suits and misdemeanors, but pervaded the whole legal constitution: for, when the Conqueror, to increase the influence of his crown, erected that great superintending court of justice in his own palace, to receive appeals criminal and civil from every court in the kingdom, and placed at the head of it the *capitalis justiciarius totius Angliæ*, of whose original authority the chief justice of this court is but a partial and feeble emanation: even that great magistrate was in the *aula regis* merely ministerial; every one of the king's tenants, who owed him service in right of a barony, had a seat and a voice in that high tribunal; and the office of justiciar was but to record and to enforce their judgments.

In the reign of king Edward the first, when this great office was abolished, and the present courts at Westminster established by a distribution of its powers; the barons preserved that supreme superintending jurisdiction which never belonged to the justiciar, but to themselves only as the jurors in the king's courts: a jurisdiction which, when nobility, from being territorial and feudal, became personal and honorary, was assumed and exercised by the peers of England, who, without any delegation of judicial authority from the crown, form to this day the supreme and final court of English law, judging in the last resort for the whole kingdom, and sitting upon the lives of the peerage, in their ancient and genuine characters, as the *parcs* of one another.

When the courts at Westminster were established in their present forms, and when the civilization and commerce of the nation had introduced more intricate questions of justice, the judicial authority in civil cases could not but enlarge its bounds; the rules of property in a cultivated state of society became by degrees beyond the compass of the unlettered multitude; and with certain well-known restrictions undoubtedly fell to the judges: yet more perhaps from necessity than by consent, as all judicial proceedings were artfully held in the Norman language, to which the people were strangers.

Of these changes in judicature, immemorial custom, and the acquiescence of the legislature, are the evidence; which establish the jurisdiction of the courts on the true principle of English law, and measure the extent of it by their ancient practice.

But no such evidence is to be found of the least relinquishment or abridgment of popular judicature in cases of crimes; on the contrary, every page of our history is filled with

the struggles of our ancestors for its preservation. The law of property changes with new objects, and becomes intricate as it extends its dominion;—but crimes must ever be of the same easy investigation:—they consist wholly in intention, and the more they are multiplied by the policy of those who govern, the more absolutely the public freedom depends upon the people's preserving the entire administration of criminal justice to themselves.—In a question of property between two private individuals, the crown can have no possible interest in preferring the one to the other: but it may have an interest in crushing both of them together, in defiance of every principle of humanity and justice, if they should put themselves forward in a contention for public liberty, against a government seeking to emancipate itself from the dominion of the laws.—No man in the least acquainted with the history of nations, or of his own country, can refuse to acknowledge, that if the administration of criminal justice were left in the hands of the crown, or its deputies, no greater freedom could possibly exist, than government might choose to tolerate from the convenience or policy of the day.

My lord, this important truth is no discovery or assertion of mine, but is to be found in every book of the law. Whether we go up to the most ancient authorities, or appeal to the writings of men of our own times, we meet with it alike in the most emphatical language.—Mr. Justice Blackstone, by no means biassed towards democratical government, having in the third volume of his Commentaries explained the excellence of the trial by jury in civil cases, expresses himself thus: vol. iv. p. 349: 'But it holds much stronger in criminal cases; since in times of difficulty and danger, more is to be apprehended from the violence and partiality of judges appointed by the crown, in suits between the king and the subject, than in disputes between one individual and another, to settle the boundaries of private property. Our law has, therefore, wisely placed this strong and two-fold barrier of a presentment and trial by jury, between the liberties of the people and the prerogative of the crown: without this barrier, justices of *oyer and terminer* named by the crown, might, as in France or in Turkey, imprison, dispatch, or exile, any man that was obnoxious to government by an instant declaration that such was their will and pleasure: so that the liberties of England cannot but subsist so long as this palladium remains sacred and inviolate, not only from all open attacks, which none will be so hardy as to make, but also from all secret machinations, which may sap and undermine it.'

But this remark, though it derives new force in being adopted by so great an authority, was no more original in Mr. Justice Blackstone than in me: the institution and authority of juries is to be found in Bracton,

who wrote above 500 years before him. 'The *curia* and the *pares*,' says he, 'were necessarily the judges in all cases of life, limb, crime, and disherison of the heir in capite. The king could not decide, for then he would have been prosecutor and judge; neither could his justices, for they represent him.*'

Notwithstanding all this, the learned judge was pleased to say, at the trial, that there was no difference between civil and criminal cases.—I say, on the contrary, independent of these authorities, that there is not, even to vulgar observation, the remotest similitude between them.

There are four capital distinctions between prosecutions for crimes, and civil actions, every one of which deserves consideration.

First, In the jurisdiction necessary to found the charge.

Secondly, In the manner of the defendant's pleading to it.

Thirdly, In the authority of the verdict which discharges him.

Fourthly, In the independence and security of the jury from all consequences in giving it.

As to the first, it is unnecessary to remind your lordships, that, in a civil case, the party who conceives himself aggrieved, states his complaint to the court,—avails himself at his own pleasure of its process,—compels an answer from the defendant by its authority,—or taking the charge *pro confesso* against him on his default, is entitled to final judgment and execution for his debt, without any interposition of a jury. But in criminal cases it is otherwise; the court has no cognizance of them, without leave from the people forming a grand inquest. If a man were to commit a capital offence in the face of all the judges of England, their united authority could not put him upon his trial:—they could file no complaint against him, even upon the records of the supreme criminal court, but could only commit him for safe custody, which is equally competent to every common justice of the peace:—the grand jury alone could arraign him, and in their discretion might likewise finally discharge him, by throwing out the bill, with the names of all your lordships as witnesses on the back of it. If it shall be said, that this exclusive power of the grand jury does not extend to lesser misdemeanors, which may be prosecuted by information; I answer, that for that very reason it becomes doubly necessary to preserve the power of the other jury which is left. In the rules of pleading, there is no distinction between capital and lesser offences; and the defendant's plea of Not guilty (which universally prevails as the legal answer to every information or indictment, as opposed to special pleas to the court in civil actions), and the

necessity imposed upon the crown to join the general issue, are absolutely decisive of the present question.

Every lawyer must admit, that the rules of pleading were originally established to mark and to preserve the distinct jurisdictions of the court and the jury, by a separation of the law from the fact, wherever they were intended to be separated. A person charged with owing a debt, or having committed a trespass, &c. &c. if he could not deny the facts on which the actions were founded, was obliged to submit his justification for matter of law by a special plea to the court upon the record; to which plea the plaintiff might demur, and submit the legal merits to the judges.—By this arrangement, no power was ever given to the jury, by an issue joined before them, but when a right of decision, as comprehensive as the issue, went along with it:—if a defendant in such civil actions pleaded the general issue instead of a special plea, aiming at a general deliverance from the charge, by showing his justification to the jury at the trial; the court protected its own jurisdiction, by refusing all evidence of the facts on which such justification was founded.—The extension of the general issue beyond its ancient limits, and in deviation from its true principle, has introduced some confusion into this simple and harmonious system; but the law is substantially the same.—No man, at this day, in any of those actions where the ancient forms of our jurisprudence are still wisely preserved, can possibly get at the opinion of a jury upon any question, not intended by the constitution for their decision. In actions of debt, detinue, breach of covenant, trespass, or replevin, the defendant can only submit the *mere fact* to the jury; the *law* must be pleaded to the court: if, dreading the opinion of the judges, he conceals his justification under the cover of a general plea, in hopes of a more favourable construction of his defence at the trial; its very existence can never even come within the knowledge of the jurors; every legal defence must arise out of facts, and the authority of the judge is interposed, to prevent their appearing before a tribunal which, in such cases, has no competent jurisdiction over them.

By imposing this necessity of pleading every legal justification to the court, and by this exclusion of all evidence on the trial beyond the negation of the fact; the courts indisputably intended to establish, and did in fact effectually secure the judicial authority over legal questions from all encroachment or violation; and it is impossible to find a reason in law, or in common sense, why the same boundaries between the fact and the law should not have been at the same time extended to criminal cases by the same rules of pleading, if the jurisdiction of the jury had been designed to be limited to the fact, as in civil actions.

But no such boundary was ever made or

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* Vide likewise Mr. Reeves' very ingenious History of the English Law,

attempted; on the contrary, every person, charged with any crime by an indictment or information, has been in all times, from the Norman conquest to this hour, not only permitted, but even bound to throw himself upon his country for deliverance, by the general plea of Not Guilty; and may submit his whole defence to the jury, whether it be a negation of the fact, or a justification of it in law; and the judge has no authority, as in a civil case, to refuse such evidence at the trial, as out of the issue, and as *coram non judice*;—an authority which in common sense he certainly would have, if the jury had no higher jurisdiction in the one case than in the other.—The general plea thus sanctioned by immemorial custom, so blends the law and the fact together, as to be inseparable but by the voluntary act of the jury in finding a special verdict: the *general* investigation of the whole charge is therefore before them; and although the defendant admits the fact laid in the information or indictment, he nevertheless, under his general plea, gives evidence of others which are collateral, referring them to the judgment of the jury, as a legal excuse or justification, and receives from their verdict a complete, general, and conclusive deliverance.

Mr. Justice Blackstone, in the fourth volume of his Commentaries, page 339, says, 'The traitorous or felonious intent are the points and very gist of the indictment, and must be answered directly by the general negative, Not Guilty; and the jury will take notice of any defensive matter, and give their verdict accordingly, as effectually as if it were specially pleaded.'

This, therefore, says sir Matthew Hale, in his Pleas of the Crown, page 258, is, upon all accounts, the most advantageous plea for the defendant: 'It would be a most unhappy case for the judge himself, if the prisoner's fate depended upon his directions:—unhappy also for the prisoner; for if the judge's opinion must rule the verdict, the trial by jury would be useless.'

My lord, the conclusive operation of the verdict when given, and the security of the jury from all consequences in giving it, render the contrast between criminal and civil cases striking and complete. No new trial can be granted, as in a civil action:—your lordships, however you may disapprove of the acquittal, have no authority to award one; for there is no precedent of any such upon record; and the discretion of the Court is circumscribed by the law.

Neither can the jurors be attainted by the crown. In Bushell's case,* Vaughan's Reports, page 146, that learned and excellent judge expresses himself thus: 'There is no case in all the law of an attainder for the king, nor any opinion but that of Thyrnings, 10th of Henry 4, title Attainder, 60 and 64, for

'which there is no warrant in law, though there be other specious authority against it, touched by none that have argued this case.'

Lord Mansfield. To be sure it is so.

Mr. Erskine. Since that is clear, my lord, I shall not trouble the Court farther upon it: indeed I have not been able to find any one authority for such an attainder but a dictum in Fitzherbert's *Natura Brevium*, page 107; and on the other hand, the doctrine of Bushell's case is expressly agreed to in very modern times: vide lord Raymond's Reports, 1st volume, page 469.

If, then, your lordships reflect but for a moment upon this comparative view of criminal and civil cases which I have laid before you; how can it be seriously contended, not merely that there is no difference, but that there is any the remotest similarity between them? In the one case, the power of accusation begins from the court;—in the other, from the people only; forming a grand jury.—In the one, the defendant must plead a special justification, the merits of which can only be decided by the judges;—in the other, he may throw himself for general deliverance upon his country.—In the first the court may award a new trial, if the verdict for the defendant be contrary to the evidence or the law;—in the last it is conclusive and unalterable;—and to crown the whole, the king never had that process of attainder which belonged to the meanest of his subjects.

When these things are attentively considered, I might ask those who are still disposed to deny the right of the jury to investigate the whole charge, whether such a solecism can be conceived to exist in any human government, much less in the most refined and exalted in the world, as that a power of supreme judicature should be conferred at random by the blind forms of the law, where no right was intended to pass with it; and which was upon no occasion and under no circumstance to be exercised; which, though exerted notwithstanding in every age and in a thousand instances, to the confusion and discomfiture of fixed magistracy, should never be checked by authority, but should continue on from century to century; the revered guardian of liberty and of life, arresting the arm of the most headstrong governments in the worst of times, without any power in the crown or its judges, to touch, without its consent, the meanest wretch in the kingdom, or even to ask the reason and principle of the verdict which acquits him.—That such a system should prevail in a country like England, without either the original institution or the acquiescing sanction of the legislature, is impossible.—Believe me, my lord, no talents can reconcile, no authority can sanction, such an absurdity;—the common sense of the world revolts at it.

Having established this important right in

* See it in this Collection, vol. 6, p. 999.

the jury beyond all possibility of cavil or controversy, I will now show your lordship, that its existence is not merely consistent with the *theory* of the law, but is illustrated and confirmed by the universal *practice* of all judges; not even excepting Mr. Justice Foster himself, whose writings have been cited in support of the contrary opinion. How a man expresses his abstract ideas is but of little importance when an appeal can be made to his plain directions to others, and to his own particular conduct: but even none of his expressions, when properly considered and understood, militate against my position.

In his justly celebrated book on the criminal law, page 256, he expresses himself thus: 'The construction which the law putteth upon fact STATED AND AGREED OR FOUND by a jury, is in all cases undoubtedly the proper province of the court.' Now if the adversary is disposed to stop here, though the author never intended he should, as is evident from the rest of the sentence, yet I am willing to stop with him, and to take it as a substantive proposition; for the slightest attention must discover that it is not repugnant to any thing which I have said. Facts *stated and agreed*, or facts *found*, by a jury, which amount to the same thing, constitute a special verdict; and who ever supposed that the law upon a special verdict was not the province of the court? Where in a trial upon a general issue the parties choose to agree upon facts and to state them, or the jury choose voluntarily to find them without drawing the legal conclusion themselves; who ever denied that in such instances the court is to draw it?—That Foster meant nothing more than that the court was to judge of the law, when the jury thus voluntarily prays its assistance by special verdict, is evident from his words which follow, for he immediately goes on to say; In cases of doubt and REAL difficulty, it is therefore commonly recommended to the jury to state facts and circumstances in a special verdict: but neither here, nor in any other part of his works, is it said or insinuated that they are *bound* to do so, but at their own free discretion: indeed, the very term *recommended*, admits the contrary, and requires no commentary. I am sure I shall never dispute the wisdom or expediency of such a recommendation in those cases of doubt, because the more I am contending for the existence of such an important right, the less it would become me to be the advocate of rashness and precipitation in the exercise of it. It is no denial of jurisdiction to tell the greatest magistrate upon earth to take good counsel in cases of real doubt and difficulty.—Judges upon trials, whose authority to state the law is indisputable, often refer it to be more solemnly argued before the court; and this court itself often holds a meeting of the twelve judges before it decides on a point upon its own records, of which the others have confessedly no cognizance till it comes

before them by the writ of error of one of the parties.—These instances are monuments of wisdom, integrity, and discretion, but they do not bear in the remotest degree upon *jurisdiction*: the sphere of jurisdiction is measured by what may or may not be decided by any given tribunal with legal effect, not by the rectitude or error of the decision. If the jury, according to these authorities, may determine the whole matter by their verdict, and if the verdict when given is not only final and unalterable, but must be enforced by the authority of the judges, and executed, if resisted, by the whole power of the state,—upon what principle of government or reason can it be argued not to be law? That the jury are in this exact predicament is confessed by Foster; for he concludes with saying, that when the law is clear, the jury, under the direction of the court, in point of law *may*, and if they are well advised will, *always find a general verdict conformably to such directions*.

This is likewise consistent with my position: if the law be clear, we may presume that the judge states it clearly to the jury; and if he does, undoubtedly the jury, if they are well advised, will find according to such directions; for they have not a capricious discretion to make law at their pleasure, but are bound in conscience as well as judges are to find it truly; and, generally speaking, the learning of the judge who presides at the trial affords them a safe support and direction.

The same practice of judges in stating the law to the jury, as applied to the particular case before them, appears likewise in the case of the King against Oneby,* 2d Lord Raymond, p. 1494. 'On the trial the judge directs the jury thus: If you believe such and such witnesses who have sworn to such and such facts, *the killing of the deceased appears to be with malice prepense*: but if you do not believe them, then you ought to find him guilty of manslaughter; and the jury may, if they think proper, give a general verdict of murder or manslaughter: *but if they decline* giving a general verdict, and *will find the facts specially*, the Court is then to form their judgment from the facts found, whether the defendant be guilty or not guilty, *i. e.* whether the act was done with malice and deliberation, or not.'—Surely language can express nothing more plainly or unequivocally, than that where the general issue is pleaded to an indictment, the law and the fact are both before the jury; and that the former can never be separated from the latter, for the judgment of the Court, unless by their own spontaneous act: for the words are, 'If they *decline* giving a general verdict, and *will find the facts specially*, the Court is THEN to form their judgment from the facts found.' So that, after a general issue joined, the authority of the Court only commences when the jury *chooses to decline* the decision of

* See it in this Collection, vol. 17, p. 29.

the law by a general verdict; the right of declining which legal determination, is a privilege conferred on them by the statute of Westminster 2d, and by no means a restriction of their powers.

But another very important view of the subject remains behind: for supposing I had failed in establishing that contrast between criminal and civil cases, which is now too clear not only to require, but even to justify another observation, the argument would lose nothing by the failure. The similarity between criminal and civil cases derives all its application to the argument from the learned judge's supposition, that the jurisdiction of the jury over the law was never contended for in the latter, and consequently on a principle of equality could not be supported in the former; whereas I do contend for it, and can incontestably establish it in both. This application of the argument is plain from the words of the Charge: 'If the jury could find the law, it would undoubtedly hold in civil cases as well as criminal: but was it ever supposed that a jury was competent to say the operation of a fine, or a recovery, or a warranty, which are mere questions of law?'

To this question I answer, that the competency of the jury in such cases is contended for to the full extent of my principle, both by Lyttleton and by Coke: they cannot indeed decide upon them *de plano*, which, as Vaughan truly says, is unintelligible, because an unmixed question of law can by no possibility come before them for decision; but whenever (which very often happens) the operation of a fine, a recovery, a warranty, or any other record or conveyance known to the law of England comes forward, mixed with the fact on the general issue, the jury have then most unquestionably a right to determine it; and what is more, no other authority possibly can; because, when the general issue is permitted by law, these questions cannot appear on the record for the judgment of the Court, and although it can grant a new trial, yet the same question must ultimately be determined by another jury. This is not only self-evident to every lawyer, but, as I said, is expressly laid down by Lyttleton in the 368th section. 'Also in such case where the inquest may give their verdict at large, if they will take upon them the knowledge of the law upon the matter, they may give their verdict generally as it is put in their charge: as in the case aforesaid they may well say, that the lessor did not disseise the lessee if they will.' Coke, in his Commentary on this section, confirms Lyttleton; saying, that in doubtful cases they should find specially for fear of an attain; and it is plain that the statute of Westminster the 2d, was made either to give or to confirm the right of the jury to find the matter specially, leaving their jurisdiction over the law as it stood by the common law. The words of the statute of Westminster 2d, chapter 30th, are, '*Ordinatum est quod just-*

tiarii ad assisas capiendas assignati, non compellantur juratores dicere precise si sit disseisina vel non; dummodo voluerint dicere veritatem facti et petere auxilium justitiariorum.'

From these words it should appear, that the jurisdiction of the jury over the law when it came before them on the general issue, was so vested in them by the constitution, that the exercise of it in all cases had been considered to be compulsory upon them, and that this act was a legislative relief from that compulsion in the case of an assize of disseizin: it is equally plain from the remaining words of the act, that their jurisdiction remained as before; '*sed si sponte velint dicere quod disseisina est vel non, admittatur eorum veredictum sub suo periculo.'*

But the most material observation upon this statute, as applicable to the present subject, is, that the terror of the attain from which it was passed to relieve them, having (as has been shown) no existence in cases of crime, the act only extended to relieve the jury at their discretion from finding the law in *civil actions*; and consequently it is only from custom, and not from positive law, that they are not *even compellable* to give a general verdict involving a judgment of law on every *criminal trial*.

These principles and authorities certainly establish that it is the duty of the judge, on every trial where the general issue is pleaded, to give to the jury his opinion on the law as applied to the case before them; and that they must find a general verdict comprehending a judgment of law, unless they choose to refer it specially to the Court.

But we are here, in a case where it is contended, that the duty of the judge is the direct contrary of this:—that he is to give no opinion at all to the jury upon the law as applied to the case before them;—that *they* likewise are to refrain from all consideration of it, and yet that the very same general verdict comprehending both fact and law is to be given by them as if the whole legal matter had been summed up by the one and found by the other.

I confess I have no organs to comprehend the principle on which such a practice proceeds. I contended for nothing more at the trial than the very practice recommended by Foster and lord Raymond:—I addressed myself to the jury upon the law with all possible respect and deference, and indeed with very marked personal attention to the learned judge: so far from urging the jury, dogmatically to think for themselves without his constitutional assistance, I called for his opinion on the question of libel; saying, that if he should tell them distinctly the paper indicted was libellous, though I should not admit that they were bound at all events to give effect to it if they felt it to be innocent; yet I was ready to agree that they ought not to go against the charge without great consideration: but that if he should shut himself up

in silence, giving no opinion at all upon the criminality of the paper from which alone any guilt could be fastened on the publisher, and should narrow their consideration to the publication, I entered my protest against their finding a verdict affixing the epithet of *guilty* to the mere fact of publishing a paper, the *guilt* of which had not been investigated. If, after this address to the jury, the learned judge had told them, that in his opinion the paper was a libel, but still leaving it to their judgments, and likewise the defendant's evidence to their consideration, had farther told them, that he thought it did not exculpate the publication; and if in consequence of such directions the jury had found a verdict for the crown, I should never have made my present motion for a new trial; because I should have considered such a verdict of guilty as founded upon the opinion of the jury on the whole matter as left to their consideration, and must have sought my remedy by arrest of judgment on the record.

But the learned judge took a direct contrary course:—he gave no opinion at all on the guilt or innocence of the paper;—he took no notice of the defendant's evidence of intention:—he told the jury, in the most explicit terms, that neither the one nor the other were within their jurisdiction; and upon the mere fact of publication directed a general verdict comprehending the epithet of *guilty*, after having expressly withdrawn from the jury every consideration of the merits of the paper published, or the intention of the publisher, from which it is admitted on all hands the *guilt* of publication could alone have any existence.

My motion is therefore founded upon this obvious and simple principle; that the defendant has had in fact NO TRIAL; having been found *guilty* without any investigation of his *guilt*, and without any power left to the jury to take cognizance of his innocence. I undertake to show, that the jury could not possibly conceive or believe from the judge's charge, that they had any jurisdiction to acquit him; however they might have been impressed even with the merit of the publication, or convinced of his meritorious intention in publishing it: nay, what is worse, while the learned judge totally deprived them of their whole jurisdiction over the question of libel and the defendant's seditious intention, he at the same time directed a general verdict of guilty, which comprehended a judgment upon both.

When I put this construction on the learned judge's direction, I found myself wholly on the language in which it was communicated; and it will be no answer to such construction, that no such restraint was meant to be conveyed by it.—If the learned judge's intentions were even the direct contrary of his expressions, yet if, in consequence of that which was expressed though not intended, the jury were abridged of a jurisdiction which belonged

to them by law, and in the exercise of which the defendant had an interest, he is equally a sufferer, and the verdict given under such misconception of authority is equally void: my application ought therefore to stand or fall by the charge itself, upon which I disclaim all disingenuous cavilling.—I am certainly bound to show, that from the general result of it, fairly and liberally interpreted, the jury could not conceive that they had any right to extend their consideration beyond the bare fact of publication, so as to acquit the defendant by a judgment founded on the legality of the Dialogue, or the honesty of the intention in publishing it.

In order to understand the learned judge's direction, it must be recollected that it was addressed to them in answer to me, who had contended for nothing more than that these two considerations ought to rule the verdict; and it will be seen, that the charge, on the contrary, not only excluded both of them by general inference, but by expressions, arguments, and illustrations the most studiously selected to convey that exclusion, and to render it binding on the consciences of the jury. After telling them in the very beginning of his Charge, that the single question for their decision was, whether the defendant had published the pamphlet? he declared to them, that it was not even *allowed to him, as the judge trying the cause*, to say whether it was or was not a libel: for that if *he* should say it was no libel, and *they*, following his direction, should acquit the defendant, they would thereby deprive the prosecutor of his writ of error upon the record, which was one of his dearest birthrights. The law, he said, was equal between the prosecutor and the defendant; that a verdict of acquittal would close the matter for ever, depriving him of his appeal; and that whatever therefore was upon the record *was not for their decision*, but might be carried at the pleasure of either party to the House of Lords.

Surely language could not convey a limitation upon the right of the jury over the question of libel, or the intention of the publisher, more positive or more universal. It was positive, inasmuch as it held out to them that such a jurisdiction could not be entertained without injustice; and it was universal, because the principle had no special application to the particular circumstances of that trial; but subjected every defendant upon every prosecution for a libel, to an inevitable conviction on the mere proof of publishing *any thing*, though both judge and jury might be convinced that the thing published was innocent and even meritorious.

My lord, I make this commentary without the hazard of contradiction from any man whose reason is not disordered.—For if the prosecutor in *every case* has a birthright by law to have the question of libel left open upon the record, which it can only be by a verdict of conviction on the single fact of pub-

lishing; no legal right can at the same time exist in the jury to shut out that question by a verdict of acquittal founded upon the merits of the publication, or the innocent mind of the publisher. Rights that are repugnant and contradictory cannot be co-existent.—The jury can never have a constitutional right to do an act beneficial to the defendant, which when done deprives the prosecutor of a right which the same constitution has vested in him.—No right can belong to one person, the exercise of which in *every instance* must necessarily work a wrong to another.—If the prosecutor of a libel has in *every instance* the privilege to try the merits of his prosecution before the judges, the jury can have no right in *any instance* to preclude his appeal to them by a general verdict for the defendant.

The jury, therefore, from this part of the charge, must necessarily have felt themselves *absolutely limited* (I might say even in their powers) to the fact of publication; because the highest restraint upon good men is to convince them that they cannot break loose from it without injustice: and the power of a good subject is never more effectually destroyed than when he is made to believe that the exercise of it will be a breach of his duty to the public, and a violation of the laws of his country.

But since equal justice between the prosecutor and the defendant is the pretence for this abridgment of jurisdiction, let us examine a little how it is affected by it.—Do the prosecutor and the defendant really stand upon an equal footing by this mode of proceeding? With what decency this can be alleged, I leave those to answer who know that it is only by the indulgence of Mr. Bearcroft, of counsel for the prosecution, that my reverend client is not at this moment in prison,* while we are discussing this notable equality. Besides, my lord, the judgment of this Court, though not final in the constitution, and therefore not binding on the prosecutor, is absolutely conclusive on the defendant.—If your lordships pronounce the record to contain no libel, and arrest the judgment on the verdict, the prosecutor may carry it to the House of Lords, and pending his writ of error, remains untouched by your lordship's decision; but, if judgment be against the defendant, it is only at the discretion of the crown (as it is said), and not of right, that he can prosecute any writ of error at all; and even if he finds no obstruction in that quarter, it is but at the best an appeal for the benefit of public liberty, from which he himself can have no personal benefit; for the writ of error

being no supersedeas, the punishment is inflicted on him in the mean time. In the case of Mr. Horne,* this Court imprisoned him for publishing a libel upon its own judgment, pending his appeal from its justice; and he had suffered the utmost rigour which the law imposed upon him as a crime, at the time that the House of Lords, with the assistance of the twelve Judges of England, were gravely assembled to determine, whether he had been guilty of any crime. I do not mention this case as hard or rigorous on Mr. Horne, as an individual: it is the general course of practice; but surely that practice ought to put an end to this argument of equality between prosecutor and prisoner. It is adding insult to injury, to tell an innocent man who is in a dungeon, pending his writ of error, and of whose innocence both judge and jury were convinced at the trial, that he is in equal scales with his prosecutor, who is at large; because he has an opportunity of deciding after the expiration of his punishment, that the prosecution had been unfounded, and his sufferings unjust.—By parity of reasoning, a prisoner in a capital case might be hanged in the mean time for the benefit of equal justice; leaving his executors to fight the battle out with his prosecutor upon the record, through every court in the kingdom; by which at last his attainder might be reversed, and the blood of his posterity remain uncorrupted.—What justice can be more impartial or equal?

So much for this right of the prosecutor of a libel to *compel* a jury in every case, generally to convict a defendant on the fact of publication, or to find a special verdict;—a right unheard of before since the birth of the constitution;—not even founded upon any equality in fact, even if such a shocking parity could exist in law, and not even contended to exist in any other case, where private men become the prosecutors of crimes for the ends of public justice.—It can have, generally speaking, no existence in any prosecution for felony; because the general description of the crime in such indictments, for the most part, shuts out the legal question in the particular instance from appearing on the record: and for the same reason, it can have no place even in appeals of death, &c. the only cases where prosecutors appear as the revengers of their own private wrongs, and not as the representatives of the crown.

The learned judge proceeded next to establish the same *universal* limitation upon the power of the jury, from the history of different trials, and the practice of former judges who presided at them; and while I am com-

* Lord Mansfield ordered the dean to be committed on the motion for the new trial; and said, he had no discretion to suffer him to be at large, without consent, after his appearance in court, on conviction. Upon which, Mr. Bearcroft gave his consent that the dean should remain at large upon bail. Note to 'Lord Erskine's Speeches.'

* Afterwards Mr. Horne Tooke, whose writings do honour to our language and country. Note to 'Lord Erskine's Speeches.'

See in this Collection, the Cases of Mr. Horne, vol. 20, p. 651, and of Mr. Horne Tooke, A. A. 1794.

plaining of what I conceive to be injustice, I must take care not to be unjust myself.—I certainly do not, nor ever did consider the learned judge's misdirection in his charge to be peculiar to himself: it was only the resistance of the defendant's evidence, and what passed after the jury returned into court with the verdict, that I ever considered to be a departure from all precedents: the rest had undoubtedly the sanction of several modern cases; and I wish, therefore, to be distinctly understood, that I partly found my motion for a new trial in opposition to these decisions.—It is my duty to speak with deference of all the judgments of this court; and I feel an additional respect for some of those I am about to combat, because they are your lordship's: but comparing them with the judgments of your predecessors for ages, which is the highest evidence of English law, I must be forgiven if I presume to question their authority.

My lord, it is necessary that I should take notice of some of them as they occur in the learned judge's charge; for although he is not responsible for the rectitude of those precedents which he only cited in support of it, yet the defendant is unquestionably entitled to a new trial, if their principles are not ratified by the court: for whenever the learned judge cited precedents to warrant the limitation on the province of the jury imposed by his own authority, it was such an adoption of the doctrines they contained, as made them a rule to the jury in their decision.

First, then, the learned judge, to overturn my argument with the jury for their jurisdiction over the whole charge, opposed your lordship's established practice for eight and twenty years; and the weight of this great authority was increased by the general manner in which it was stated; for I find no expressions of your lordship's in any of the reported cases which go the length contended for.—I find the *practice*, indeed, fully warranted by them: but I do not meet with the *principle* which can alone vindicate that practice, fairly and distinctly avowed. The learned judge, therefore, referred to the charge of chief justice Raymond, in the case of the King and Franklin, in which the *universal limitation* contended for, is indeed laid down, not only in the most unequivocal expressions, but the ancient jurisdiction of juries, resting upon all the authorities I have cited, treated as a ridiculous notion which had been just taken up a little before the year 1731, and which no man living had ever dreamed of before. The learned judge observed, that lord Raymond stated to the jury on Franklin's trial that there were three questions: the first was, the fact of publishing the Craftsman: secondly, whether the averments in the information were true: but that the third, viz, whether it was a libel, was merely a question of *law*, with which the jury *had nothing to do*, as had been then of late thought by some people who ought to have known better.

This direction of lord Raymond's was fully ratified and adopted in all its extent, and given to the jury, on the present trial, with several others of the same import, as an unerring guide for their conduct; and surely human ingenuity could not frame a more abstract and universal limitation upon their right to acquit the defendant by a general verdict; for lord Raymond's expressions amount to an absolute denial of the right of the jury to find the defendant not guilty, if the publication and innuendos are proved. 'Libel or no libel, is a question of law, with which you, the jury, *have nothing to do*.' How then can they have any right to give a general verdict consistently with this declaration?—Can any man in his senses collect that he has a right to decide on that with which he has nothing to do?

But it is needless to comment on these expressions, for the jury were likewise told by the learned judge himself, that, if they believed the fact of publication, they were *bound* to find the defendant guilty; and it will hardly be contended, that a man has a right to refrain from doing that which he is bound to do.

Mr. Cowper, as counsel for the prosecution, took upon him to explain what was meant by this expression; and I seek for no other construction: 'The learned judge (said he) did not mean to deny the *right* of the jury, but only to convey, that there was a religious and moral obligation upon them to refrain from the exercise of it.' Now, if the principle which imposed that obligation had been alleged to be *special*, applying only to the *particular case of the dean of St. Asaph*, and consequently consistent with the right of the jury to a more enlarged jurisdiction in *other* instances; telling the jury that they were bound to convict on proof of publication, might be plausibly construed into a recommendation to refrain from the exercise of their right in *that case*, and not to a *general* denial of its existence; but the moment it is recollected, that the principle which bound them was not *particular* to the instance, but *abstract and universal*, binding alike in *every* prosecution for a libel, it requires no logic to pronounce the expression to be an absolute, unequivocal, and universal denial of the right: common sense tells every man, that to speak of a person's right to do a thing, which yet, in every possible instance where it might be exerted, he is religiously and morally bound not to exert, is not even sophistry, but downright vulgar nonsense. But the jury were not only limited by these modern precedents, which certainly have an existence; but were in my mind limited with still greater effect by the learned judge's declaration, that some of those ancient authorities on which I had principally relied for the establishment of their jurisdiction, had not merely been over-ruled, but were altogether inapplicable.—I particularly observed how much ground I lost with the jury, when they were told from the bench, that even in Bushell's case, on which I had

so greatly depended, the very reverse of my doctrine had been expressly established: the court having said unanimously in that case, according to the learned judge's statement, that if the jury be asked what the law is, they cannot say, and having likewise ratified in express terms the maxim, *ad questionem legis non respondent juratores*.

My lord, this declaration from the bench, which I confess not a little staggered and surprised me, rendered it my duty to look again into Vaughan, where Bushell's case is reported: I have performed that duty, and now take upon me positively to say, that the words of lord chief justice Vaughan, which the learned judge considered as a judgment of the court, denying the jurisdiction of the jury over the law, *where a general issue is joined before them*, were, on the contrary, made use of by that learned and excellent person, to expose the fallacy of such a misapplication of the maxim alluded to, by the counsel against Bushell; declaring that it had no reference to any case where the law and the fact were incorporated by the plea of Not Guilty, and confirming the right of the jury to find the law upon every such issue, in terms the most emphatical and expressive. This is manifest from the whole report.

Bushell, one of the jurors on the trial of Penn and Mead, had been committed by the court for finding the defendant not guilty, against the direction of the court in matter of law; and being brought before the court of Common Pleas by Habeas Corpus, this cause of commitment appeared upon the face of the return to the writ.—It was contended by the counsel against Bushell upon the authority of this maxim, that the commitment was legal, since it appeared by the return, that Bushell had taken upon him to find the law against the direction of the judge, and had been therefore legally imprisoned for that contempt.—It was upon that occasion that chief justice Vaughan, with the concurrence of the whole court, repeated the maxim, *ad questionem legis non respondent juratores*, as cited by the counsel for the crown, but denied the application of it to impose any restraint upon jurors trying any crime upon the general issue.—His language is too remarkable to be forgotten, and too plain to be misunderstood. Taking the words of the return to the Habeas Corpus, viz. 'That the jury did acquit against the direction of the court in matter of law;' 'These words,' says this great lawyer, 'taken literally and *de plano* are insignificant and unintelligible, for no issue can be joined of matter of law; no jury can be charged with the trial of matter of law barely; no evidence ever was, or can be given to a jury of what is law or not; nor any oath given to a jury to try matter of law *alone*, nor can any attain lie for such a false oath. Therefore we must take off this veil and colour of words, which make a show of being something, but are in fact nothing: for if the

'meaning of these words, *finding against the direction of the court in matter of law*, be, that if the judge, having heard the evidence given in court (for he knows no other), shall tell the jury upon this evidence, that the law is for the plaintiff or the defendant, and they, under the pain of fine and imprisonment, are to find accordingly, every one sees that the jury is but a troublesome delay, great charge, and of no use in determining right and wrong; which were a strange and new-found conclusion, after a trial so celebrated for many hundreds of years in this country.'

Lord chief justice Vaughan's argument is therefore plainly this. Adverting to the arguments of the counsel, he says, You talk of the maxim *ad questionem legis non respondent juratores*, but it has no sort of application to your subject.—The words of your return, viz. That Bushell did acquit against the direction of the court in matter of law, are unintelligible, and, as applied to the case, impossible. The jury could not be asked in the abstract, what was the law: they could not have an issue of the law joined before them: they could not be sworn to try it. *Ad questionem legis non respondent juratores*: therefore to say literally and *de plano* that the jury found the law against the judge's direction is absurd: they could not be in a situation to find it;—an unmixed question of law could not be before them:—the judge could not give any positive directions of law upon the trial, for the law can only arise out of facts, and the judge cannot know what the facts are till the jury have given their verdict. Therefore, continued the Chief Justice, let us take off this veil and colour of words, which make a show of being something, but are in fact nothing: let us get rid of the fallacy of applying a maxim, which truly describes the jurisdiction of the courts over issues of law, to destroy the jurisdiction of jurors, in cases where law and fact are blended together upon a trial:—since, if the jury at the trial are bound to receive the law from the judge, every one sees that it is a mere mockery, and of no use in determining right and wrong.—This is the plain common sense of the argument; and it is impossible to suggest a distinction between its application to Bushell's case and to the present; except that the right of imprisoning the jurors was there contended for, in order to enforce obedience to the directions of the judge.—But this distinction, if it deserves the name, though held up by Mr. Bearcroft as very important, is a distinction without a difference; for if, according to Vaughan, the free agency of the jury over the whole charge, uncontrolled by the judge's direction, constitutes the whole of that ancient mode of trial, it signifies nothing by what means that free agency is destroyed; whether by the imprisonment of conscience or of body: by the operation of their virtues or of their fears.—Whether they decline exerting their jurisdic-

tion from being told that the exertion of it is a contempt of religious and moral order, or a contempt of the court punishable by imprisonment; their jurisdiction is equally taken away.

My lord, I should be very sorry improperly to waste the time of the Court, but I cannot help repeating once again, that if, in consequence of the learned judge's directions, the jury, from a just deference to learning and authority, from a nice and modest sense of duty, felt themselves not at liberty to deliver the defendant from the whole indictment; **HE HAS NOT BEEN TRIED**: because, though he was entitled by law to plead generally that he was not guilty; though he did in fact plead it accordingly, and went down to trial upon it, yet the jury have not been permitted to try that issue, but have been directed to find at all events a general verdict of Guilty; with a positive injunction not to investigate the guilt, or even to listen to any evidence of innocence.

My lord, I cannot help contrasting this trial, with that of colonel Gordon but a few sessions past in London.—I had in my hand but this moment, an accurate note of Mr. Baron Eyre's* charge to the jury on that occasion; I will not detain the Court by looking for it amongst my papers; because I believe I can correctly repeat the substance of it.

Earl of Mansfield. The case of the King against Cosmo Gordon?

Mr. Erskine. Yes, my lord: colonel Gordon was indicted for the murder of general Thomas, whom he had killed in a duel: and the question was, whether, if the jury were satisfied of that fact, the prisoner was to be convicted of murder? *That* was, according to Foster, as much a question of law, as libel or no libel: but Mr. Baron Eyre did not therefore feel himself at liberty to withdraw it from the jury. After stating (greatly to his honour) the hard condition of the prisoner, who was brought to a trial for life, in a case where the positive law and the prevailing manners of the times were so strongly in opposition to one another, that he was afraid the punishment of individuals would never be able to beat down an offence so sanctioned, he addressed the jury nearly in these words: 'Nevertheless, gentlemen, I am bound to declare to you, what the law is as applied to this case, in all the different views in which it can be considered by you upon the evidence.—*Of this law and of the facts as you shall find them, your verdict must be compounded*; and I persuade myself, that it will be such a one as to give satisfaction to your own consciences.'

Now, if Mr. Baron Eyre, instead of telling the jury that a duel, however fairly and honourably fought, was a murder by the law of

England, and leaving them to find a general verdict under that direction, had said to them, that whether such a duel was murder or manslaughter, was a question with which neither he nor they had any thing to do, and on which he should therefore deliver no opinion; and had directed them to find that the prisoner was guilty of killing the deceased in a deliberate duel, telling them, that the court would settle the rest; that would have been directly consonant to the case of the dean of St. Asaph.—By this direction, the prisoner would have been in the hands of the court, and the judges, not the jury, would have decided upon the life of colonel Gordon.

But the two learned judges differ most essentially indeed. Mr. Baron Eyre conceives himself bound in duty to state the law as applied to the particular facts, and leave it to the jury.—Mr. Justice Buller says, he is not bound nor even allowed so to state or apply it, and withdraws it entirely from their consideration.—Mr. Baron Eyre tells the jury that their verdict is to be compounded of the fact and the law.—Mr. Justice Buller, on the contrary, that it is to be confined to the fact only, the law being the exclusive province of the Court. My lord, it is not for me to settle differences of opinion between the judges of England, nor to pronounce which of them is wrong: but since they are contradictory and inconsistent, I may hazard the assertion that they cannot both be right: the authorities which I have cited, and the general sense of mankind which settles every thing else, must determine the rest.

My lord, I come now to a very important part of the case, untouched I believe before in any of the arguments on this occasion.

I mean to contend, that the learned judge's charge to the jury cannot be supported even upon its own principles; for, supposing the court to be of opinion that all I have said in opposition to these principles is inconclusive; and that the question of libel, and the intention of the publisher, were properly withdrawn from the consideration of the jury, still I think I can make it appear that such a judgment would only render the misdirection more palpable and striking.

I may safely assume, that the learned judge must have meant to direct the jury either to find a general or a special verdict; or, to speak more generally, that one of these two verdicts must be the object of *every* charge: because I venture to affirm, that neither the records of the courts, the reports of their proceedings, nor the writings of lawyers, furnish any account of a third.—There can be no middle verdict between both; the jury must either try the whole issue generally, or find the facts specially, referring the legal conclusion to the court.

I may affirm with equal certainty, that the general verdict, *ex vi termini*, is universally as comprehensive as the issue, and that consequently such a verdict on an indictment,

* Afterwards successively Lord Chief Baron of the court of Exchequer, and Lord Chief Justice of the court of Common Pleas.

upon the general issue, Not guilty, universally and unavoidably involves a judgment of law, as well as fact; because the charge comprehends both, and the verdict, as has been said, is co-extensive with it. Both Coke and Littleton give this precise definition of a general verdict, for they both say, that if the jury *will* find the law, they may do it by a general verdict, which is ever as large as the issue.—If this be so, it follows by necessary consequence, that if the judge means to direct the jury to find generally against a defendant, he must leave to their consideration every thing which goes to the constitution of such a general verdict, and is therefore bound to permit them to come to, and to direct them how to form that general conclusion from the law and the fact, which is involved in the term *Guilty*.—For it is ridiculous to say, that guilty is a *fact*;—it is a conclusion in law from a fact, and therefore can have no place in a special verdict, where the legal conclusion is left to the court.

In this case the defendant is charged, not with having published this pamphlet, but with having published a certain false, scandalous, and seditious libel, with a seditious and rebellious intention.—He pleads that he is not guilty in manner and form as he is accused; which plea is admitted on all hands to be a denial of the whole charge, and consequently does not merely put in issue the fact of publishing the pamphlet; but the truth of the whole indictment, *i. e.* the publication of the libel set forth in it, with the intention charged by it.

When this issue comes down for trial, the jury must either find the whole charge or a part of it; and admitting, for argument sake, that the judge has a right to dictate either of these two courses; he is undoubtedly bound in law to make his direction to the jury conformable to the one or the other. If he means to confine the jury to the fact of publishing, considering the guilt of the defendant to be a legal conclusion for the court to draw from that fact, specially found on the record, he ought to direct the jury to find that fact without affixing the epithet of *Guilty* to the finding.—But, if he will have a general verdict of *Guilty*, which involves a judgment of law as well as fact, he must leave the law to the consideration of the jury; since when the word *Guilty* is pronounced by them, it is so well understood to comprehend every thing charged by the indictment, that the associate or his clerk instantly records, that the defendant is guilty in manner and form as he is accused, *i. e.* not simply that he has *published* the pamphlet contained in the indictment;—but that he is, *guilty of publishing the libel* with the wicked intentions charged on him by the record.

Now, if this effect of a general verdict of *Guilty* is reflected on for a moment, the illegality of directing one upon the bare fact of publishing, will appear in the most glaring

colours.—The learned judge says to the jury, Whether this be a libel is not for your consideration; I can give no opinion on that subject without injustice to the prosecutor; and as to what Mr. Jones swore concerning the defendant's motives for the publication, that is likewise not before you: for if you are satisfied in point of fact that the defendant *published* this pamphlet, you are bound to find him *guilty*. Why guilty, my lord, when the consideration of guilt is withdrawn? He confines the jury to the finding of a fact, and enjoins them to leave the legal conclusion from it to the court; yet, instead of directing them to make that fact the subject of a special verdict, he desires them in the same breath to find a general one;—to draw the conclusion without any attention to the premises:—to pronounce a verdict which upon the face of the record includes a judgment upon their oaths that the paper is a libel, and that the publisher's intentions in publishing it were wicked and seditious, although neither the one nor the other made any part of their consideration.—My lord, such a verdict is a monster in law, without precedent in former times, or root in the constitution.—If it be true, on the principle of the charge itself, that the fact of publication was all that the jury were to find, and all that was necessary to establish the defendant's guilt, if the thing published be a libel, why was not that fact found like all other facts upon special verdicts?—Why was an epithet, which is a legal conclusion from the fact, extorted from a jury who were restrained from forming it themselves? The verdict must be taken to be general or special: if general, it has found the whole issue without a co-extensive examination:—if special, the word *Guilty*, which is a conclusion from facts, can have no place in it.—Either this word *Guilty* is operative or unessential; an epithet of substance, or of form.—It is impossible to controvert that proposition, and I give the gentlemen their choice of the alternative.—If they admit it to be operative and of real substance, or, to speak more plainly, that the fact of publication found specially, without the epithet of *Guilty*, would have been an imperfect verdict inconclusive of the defendant's guilt, and on which no judgment could have followed: then it is impossible to deny that the defendant has suffered injustice; because such an admission confesses that a criminal conclusion from a fact has been obtained from the jury, without permitting them to exercise that judgment which might have led them to a conclusion of innocence; and that the word *Guilty* has been obtained from them at the trial as a mere matter of form, although the verdict without it, stating only the fact of publication which they were directed to find, to which they thought the finding alone enlarged, and beyond which they had never enlarged their enquiry, would have been an absolute verdict of acquittal.—If, on the other hand, to avoid this insuperable objection to

the charge, the word Guilty is to be reduced to a mere word of form, and it is to be contended that the fact of publication found specially would have been tantamount; be it so:—let the verdict be so recorded;—let the word Guilty be expunged from it, and I instantly sit down;—I trouble your lordships no farther;—I withdraw my motion for a new trial, and will maintain in arrest of judgment, that the dean is not convicted. But if this is not conceded to me, and the word Guilty, though argued to be but *form*, and though as such obtained from the jury, is still preserved upon the record, and made use of against the defendant as *substance*; it will then become us (independently of all consideration as lawyers), to consider a little how that argument is to be made consistent with the honour of gentlemen, or that fairness of dealing which cannot but have place wherever justice is administered.

But in order to establish that the word Guilty is a word of essential substance; that the verdict would have been imperfect without it; and that therefore the defendant suffers by its insertion; I undertake to show your lordship, upon every principle and authority of law, that if the fact of publication, which was all that was left to the jury, had been found by special verdict, no judgment could have been given on it.

My lord, I will try this by taking the fullest finding which the facts in evidence could possibly have warranted. Supposing then, for instance, that the jury had found that the defendant published the paper according to the tenour of the indictment; that it was written of and concerning the king and his government; and that the innuendos were likewise as averred, K. meaning the present King, and P. the present Parliament of Great Britain: on such a finding, no judgment could have been given by the court, even if the record had contained a complete charge of a libel. No principle is more unquestionable than that, to warrant any judgment upon a special verdict, the court, which can presume nothing that is not visible on the record, must see sufficient matter upon the face of it, which, if taken to be true is *conclusive* of the defendant's guilt. They must be able to say, If this record be true, the defendant *cannot* be innocent of the crime which it charges on him.—But from the facts of such a verdict the court could arrive at no such legitimate conclusion; for it is admitted on all hands, and indeed expressly laid down by your lordship in the case of the King against Woodfall,* that publication even of a libel is not *conclusive* evidence of guilt: for that the defendant may give evidence of an innocent publication.

Looking therefore upon a record containing a good indictment of a libel, and a verdict finding that the defendant published it, but without the epithet of Guilty, the court could

not pronounce that he published it with the malicious intention which is the essence of the crime: they could not say what might have passed at the trial:—for any thing that appeared to them he might have given such evidence of innocent motive, necessity, or mistake, as might have amounted to excuse or justification.—They would say, that the facts stated upon the verdict would have been fully sufficient in the absence of a legal defence to have warranted the judge to have directed, and the jury to have given a general verdict of Guilty, comprehending the intention which constitutes the crime: but that to warrant *the Bench*, which is ignorant of every thing at the trial, to presume that intention, and thereupon to pronounce judgment on the record, the jury must not merely find full evidence of the crime, but such facts as compose its legal definition. This wise principle is supported by authorities which are perfectly familiar.

If, in an action of trover, the plaintiff proves property in himself, possession in the defendant, and a demand and refusal of the thing charged to be converted; this evidence unanswered is full proof of a conversion; and if the defendant could not show to the jury why he had refused to deliver the plaintiff's property on a legal demand of it, the judge would direct them to find him guilty of the conversion.—But on the same facts found by special verdict, no judgment could be given by the court: the judges would say, If the special verdict contains the whole of the evidence given at the trial, the jury should have found the defendant guilty; for the conversion was fully proved, but we cannot declare these facts to amount to a conversion, for the defendant's intention was a fact, which the jury should have found from the evidence, over which we have no jurisdiction. So in the case put by lord Coke, I believe in his first Institute 115, —If a modus is found to have existed beyond memory till within thirty years before the trial, the court cannot upon such facts found by special verdict pronounce against the modus: but any one of your lordships would certainly tell the jury, that upon such evidence they were warranted in finding against it. In all cases of prescription, the universal practice of judges is to direct juries, by analogy to the statute of limitations, to decide against incorporeal rights, which for many years have been relinquished; but such modern relinquishments, if stated upon the record by special verdict, would in no instance warrant a judgment against any prescription. The principle of the difference is obvious and universal: the court looking at a record can presume nothing; it has nothing to do with reasonable probabilities, but is to establish legal certainties by its judgments.—Every crime is, like every other complex idea, capable of a legal definition: if all the component parts which go to its formation are put as facts upon the record, the court can

pronounce the perpetrator of them a criminal: but if any of them are wanting, it is a chasm in fact, and cannot be supplied. Wherever intention goes to the essence of the charge, it must be found by the jury; it must be either comprehended under the word Guilty in the general verdict, or specifically found as a fact by the special verdict. This was solemnly decided by the court in Huggins's case,* in second lord Raymond, 1581, which was a special verdict of murder from the Old Bailey.

It was an indictment against John Huggins and James Barnes, for the murder of Edward Arne. The indictment charged that Barnes made an assault upon Edward Arne, being in the custody of the other prisoner Huggins, and detained him for six weeks in a room newly built over the common sewer of the prison, where he languished and died: the indictment further charged, that Barnes and Huggins well knew that the room was unwholesome and dangerous; the indictment then charged that the prisoner Huggins of his malice aforethought was present, aiding, and abetting Barnes, to commit the murder aforesaid. This was the substance of the indictment.

The special verdict found that Huggins was warden of the Fleet by letters patent; that the other prisoner Barnes was servant to Gibbons, Huggins' deputy in the care of all the prisoners, and of the deceased a prisoner there.—That the prisoner Barnes, on the 7th of September, put the deceased Arne in a room over the common sewer which had been newly built, knowing it to be newly built, and damp, and situated as laid in the indictment: *and that fifteen days before the prisoner's death, HUGGINS likewise well knew that the room was new built, damp, and situated as laid. They found that fifteen days before the death of the prisoner, Huggins was present in the room, and saw him there under duress of imprisonment, but then and there turned away, and Barnes locked the door, and that from that time till his death the deceased remained locked up.*

It was argued before the twelve judges in Serjeants' Inn, whether Huggins was guilty of murder. It was agreed that he was not answerable *criminally*, for the act of his deputy, and could not be guilty, unless the criminal intention was brought personally home to himself; and it is remarkable how strongly the judges required the fact of knowledge and malice, to be stated on the face of the verdict, as opposed to *evidence* of intention, and inference from a fact.

The Court said, It is chiefly relied on that Huggins was present in the room, and saw Arne *sub duritie imprisonamenti, et se avertit*; but he might be present, and not know all the circumstances; the words are *vidit sub duritie*; but he might see him under duress,

and not *know* he was under duress: it was answered, that seeing him under duress evidently means he knew he was under duress; but says the court, '*We cannot take things by inference in this manner; his seeing is but evidence of his knowledge of these things; and therefore the jury, if the fact would have borne it, should have found that Huggins knew he was there without his consent; which not being done, we cannot intend these things nor infer them; we must judge of facts, and not from the evidence of facts;*' and cited Kelynge, 78; that whether a man be aiding and abetting a murder is matter of fact, and ought to be expressly found by a jury.

The application of these last principles and authorities to the case before the Court is obvious and simple.—The criminal intention is a fact, and must be found by the jury: and that finding can only be expressed upon the record by the general verdict of Guilty which comprehends it, or by the special enumeration of such facts as do not merely amount to evidence of, but which completely and conclusively constitute the crime: but it has been shown, and is indeed admitted, that the publication of a libel is only *prima facie* evidence of the complex charge in the indictment, and not such a fact as amounts in itself, when specially stated, to conclusive guilt; since, as the judges cannot tell how the criminal inference from the fact of publishing a libel, might have been rebutted at the trial; no judgment can follow from a special finding, that the defendant published the paper indicted, according to the tenour laid in the indictment.—It follows from this, that if the jury had only found the fact of publication, which was all that was left to them, *without affixing the epithet of Guilty*, which could only be legally affixed by an investigation not permitted to them, a *venire facias de novo* must have been awarded because of the uncertainty of the verdict as to the criminal intention: whereas it will now be argued, that if the Court shall hold the Dialogue to be a libel, the defendant is fully convicted; because the verdict does not merely find that he PUBLISHED, which is a finding consistent with innocence, but finds him GUILTY of publishing, which is a finding of the criminal publication charged by the indictment.

My lord, how I shall be able to defend my innocent client against such an argument I am not prepared to say; I feel all the weight of it; but that feeling surely entitles me to greater attention, when I complain of that which subjects him to it, without the warrant of the law.—It is the weight of such an argument that entitles me to a new trial: for the dean of St. Asaph is not only found guilty, without any investigation of his guilt by the jury, but without that question being even open to your lordships on the record. Upon the record, the Court can only say the Dialogue is, or is not, a libel; but if it should pronounce it to be one, the criminal inten-

* See the Proceedings against Huggins in Vol. 17 of this Collection.

tion of the defendant in publishing it is taken for granted by the word Guilty; although it has not only not been tried, but evidently appears from the verdict itself not to have been found by the jury.—Their verdict is, ‘Guilty of publishing; but whether a libel or not, they do not find.’—And it is therefore impossible to say that they can have found a criminal motive in publishing a paper, on the criminality of which they have formed no judgment.—Printing and publishing that which is legal, contains in it no crime;—the guilt must arise from the publication of a libel; and there is therefore a palpable repugnancy on the face of the verdict itself, which first finds the dean guilty of publishing, and then renders the finding a nullity, by pronouncing ignorance in the jury whether the thing published comprehends any guilt.

To conclude this part of the subject, the epithet of guilty (as I set out with at first) must either be taken to be substance, or form.—If it be substance, and, as such, conclusive of the *criminal* intention of the publisher, should the thing published be hereafter adjudged to be a libel, I ask a new trial, because the defendant’s guilt in that respect has been found without having been tried: if, on the other hand, the word GUILTY is admitted to be but a word of form, then let it be expunged, and I am not hurt by the verdict.

Having now established, according to my two first propositions, that the jury upon every general issue, joined in a criminal case, have a constitutional jurisdiction over the whole charge, I am next, in support of my third, to contend, that the case of a libel forms no legal exception to the general principles which govern the trial of all other crimes;—that the argument for the difference, viz. because the whole charge always appears on the record, is false in fact, and that, even if true, it would form no substantial difference in law.

As to the first, I still maintain that the whole case does by no means necessarily appear on the record.—The crown may indict part of the publication, which may bear a criminal construction when separated from the context, and the context omitted having no place in the indictment, the defendant can neither demur to it, nor arrest the judgment after a verdict of guilty; because the Court is absolutely circumscribed by what appears on the record, and the record contains a legal charge of a libel.

I maintain likewise, that, according to the principles adopted upon this trial, he is equally shut out from such defence before the jury; for though he may read the explanatory context in evidence, yet he can derive no advantage from reading it, if they are tied down to find him guilty of publishing the matter which is contained in the indictment, however its innocence may be established by

a view of the whole work.—The only operation which looking at the context can have upon a jury is, to convince them that the matter upon the record, however libellous when taken by itself, was not intended to convey the meaning which the words indicted import in language, when separated from the general scope of the writing: but upon the principle contended for, they could not acquit the defendant upon any such opinion, for that would be to take upon them the prohibited question of libel, which is said to be matter of law for the Court.

My learned friend Mr. Bearcroft appealed to his audience with an air of triumph, whether any sober man could believe, that an English jury, in the case I put from Algernon Sidney, would convict a defendant of publishing the Bible, should the crown indict a member of a verse which was blasphemous in itself if separated from the context. My lord, if my friend had attended to me, he would have found, that, in considering such supposition as an absurdity, he was only repeating my own words.—I never supposed that a jury would act so wickedly or so absurdly, in a case where the principle contended for by my friend Mr. Bearcroft carried so palpable a face of injustice, as in the instance which I selected to expose it; and which I therefore selected to show, that there were cases in which the supporters of the doctrine were ashamed of it, and obliged to deny its operation: for it is impossible to deny that, if the jury can look at the context in the case put by Sidney, and acquit the defendant on the merits of the thing published, they may do it in cases which will directly operate against the principle he seems to support.—This will appear from other instances, where the injustice is equal, but not equally striking.

Suppose the crown were to select some passage from Locke upon Government; as for instance; ‘that there was no difference between the king and the constable when either of them exceeded their authority.’ That assertion, under certain circumstances, if taken by itself without the context, might be highly seditious, and the question therefore would be *quo animo* it was written;—perhaps the real meaning of the sentence might not be discoverable by the immediate context without a view of the whole chapter,—perhaps of the whole book; therefore to do justice to the defendant, upon the very principle by which Mr. Bearcroft in answering Sidney’s case can alone acquit the publisher of his Bible, the jury must look into the whole Essay on Government, and form a judgment of the design of the author, and the meaning of his work.

Lord Mansfield. To be sure they may judge from the whole work.

Mr. Erskine. And what is this, my lord, but determining the question of libel which is denied to-day? for if a jury may acquit the

publisher of any part of Mr. Locke on Government, from a judgment arising out of a view of the whole book, though there be no innuendos to be filled up as facts in the indictment,—*what is it* that bound the jury to convict the dean of St. Asaph, as the publisher of sir William Jones's Dialogue, on the bare fact of publication, without the right of saying that *his* observations as well as Mr. Locke's, were speculative, abstract, and legal?

Lord Mansfield. They certainly may in all cases go into the whole context.

Mr. Erskine. And *why* may they go into the context?—Clearly, my lord, to enable them to form a correct judgment of the meaning of the part indicted, even though no particular meaning be submitted to them by averments in the indictment; and therefore the very permission to look at the context for such a purpose (where there are no innuendos to be filled up by them as facts), is a palpable admission of all I am contending for, viz. the right of the jury to judge of the merits of the paper, and the intention of the author.*

But it is said, that though a jury have a right to decide that a paper criminal as far as it appears on the record, is nevertheless legal when explained by the whole work of which it is a part; yet that they shall have no right to say that the whole work itself, if it happens to be all indicted, is innocent and legal. This proposition, my lord, upon the bare stating of it, seems too preposterous to be seriously entertained; yet there is no alternative between maintaining it in its full extent, and abandoning the whole argument.

If the defendant is indicted for publishing part of the verse in the Psalms, 'There is no God,' it is asserted that the jury may look at the context, and seeing that the whole verse did not maintain that blasphemous proposition, but only that the fool had said so in his heart, may acquit the defendant upon a judgment that it is no libel, to impute such imagination to a fool: but if the whole verse had been indicted, viz. 'The fool has said in his heart, There is no God;' the jury, on the principle contended for, would be restrained from the same judgment of its legality, and must convict of blasphemy on the fact of publishing, leaving the question of libel untouched on the record.

If, in the same manner, only part of this very Dialogue had been indicted instead of the whole, it is said even by your lordship, that the jury might have read the context, and then, notwithstanding the fact of publishing, might have collected from the whole, its abstract and speculative nature, and have acquitted the defendant upon that judgment of it;—and yet it is contended that they have no right to form the same judgment of it

upon the present occasion, although the whole be before them upon the face of the indictment,—but are bound to convict the defendant upon the fact of publishing, notwithstanding they should have come to the same judgment of its legality, which it is admitted they might have come to, on trying an indictment for the publication of a part. Really, my lord, the absurdities and gross departures from reason, which must be hazarded to support this doctrine, are endless.

The criminality of the paper is said to be a question of law, yet the meaning of it, from which alone the legal interpretation can arise, is admitted to be a question of fact.—If the text be so perplexed and dubious as to require innuendos to explain, to point and to apply obscure expression or construction, the jury alone, as judges of fact, are to interpret and to say what sentiments the author must have meant to convey by his writing:—yet if the writing be so plain and intelligible as to require no averments of its meaning, it then becomes so obscure and mysterious as to be a question of law, and beyond the reach of the very same men who but a moment before were interpreters for the judges; and though its object be most obviously peaceable and its author innocent, they are bound to say upon their oaths, that it is wicked and seditious, and the publisher of it guilty.

As a question of fact the jury are to try the real sense and construction of the words indicted, by comparing them with the context; and yet if that context itself, which affords the comparison, makes part of the indictment, the whole becomes a question of law, and they are then bound down to convict the defendant on the fact of publishing it, without any jurisdiction over the meaning.—To complete the juggle, the intention of the publisher may likewise be shown as a fact, by the evidence of any extrinsic circumstances, such as the context to explain the writing, or the circumstances of mistake or ignorance under which it was published; and yet in the same breath, the intention is pronounced to be an inference of law from the act of publication, which the jury cannot exclude, but which must depend upon the future judgment of the Court.

But the danger of this system is no less obvious than its absurdity. I do not believe that its authors ever thought of inflicting death upon Englishmen, without the interposition of a jury; yet its establishment would unquestionably extend to annihilate the substance of that trial in every prosecution for high treason, where the publication of any writing was laid as the overt act. I illustrated this by a case when I moved for a rule, and called upon my friends for an answer to it, but no notice has been taken of it by any of them;—this was just what I expected:—when a convincing answer cannot be found to an objection, those who understand controversy never give strength to it by a weak one.

* The right was fully exercised by the jury who tried and acquitted Mr. Stockdale. Note to 'Lord Erskine's Speeches.'

I said, and I again repeat, that if an indictment charges that a defendant did traitorously intend, compass, and imagine the death of the king; and, in order to carry such treason into execution, published a paper, which it sets out *literatim* on the face of the record, the principle which is laid down to-day would subject that person to the pains of death by the single authority of the judges, without leaving anything to the jury, but the bare fact of publishing the paper.—For, if that fact were proved and the defendant called no witnesses, the judge who tried him would be warranted, nay bound in duty by the principle in question, to say to the jury, Gentlemen, the overt act of treason charged upon the defendant, is the publication of this paper, intending to compass the death of the king;—the fact is proved, and you are therefore bound to convict him: the treasonable intention is an inference of law from the act of publishing; and if the thing published does not upon a future examination intrinsically support that inference, the Court will arrest the judgment, and your verdict will not affect the prisoner.

My lord, I will rest my whole argument upon the analogy between these two cases, and give up every objection to the doctrine when applied to the one, if, upon the strictest examination, it shall not be found to apply equally to the other.

If the seditious intention be an inference of law, from the fact of publishing the paper which this indictment charges to be a libel,—is not the treasonable intention equally an inference from the fact of publishing that paper, which the other indictment charges to be an overt act of treason? In the one case as in the other, the writing or publication of a paper is the whole charge; and the substance of the paper so written or published makes all the difference between the two offences.—If that substance be matter of law where it is a seditious libel, it must be matter of law where it is an act of treason: and if because it is law the jury are excluded from judging it in the one instance, their judgment must suffer an equal abridgment in the other.

The consequence is obvious. If the jury, by an appeal to their consciences, are to be thus limited in the free exercise of that right which was given them by the constitution, to be a protection against judicial authority, where the weight and majesty of the crown is put into the scale against an obscure individual,—the freedom of the press is at an end: for how can it be said that the press is free because every thing may be published without a previous license, if the publisher of the most meritorious work which the united powers of genius and patriotism ever gave to the world, may be prosecuted by information of the king's Attorney General, without the consent of the grand jury,—may be convicted by the petty jury, on the mere fact of publishing

(who, indeed, without perjuring themselves, must on this system inevitably convict him), and must then depend upon judges, who may be the supporters of the very administration whose measures are questioned by the defendant, and who must therefore either give judgment against him or against themselves?

To all this Mr. Bearcroft shortly answers, Are you not in the hands of the same judges, with respect to your property and even to your life, when special verdicts are found in murder, felony, and treason? In these cases do prisoners run any hazard from the application of the law by the judges, to the facts found by the juries? Where can you possibly be safer?

My lord, this is an argument which I can answer without indelicacy or offence, because your lordship's mind is much too liberal to suppose, that I insult the Court by general observations on the principles of our legal government:—however safe we might be, or might think ourselves, the constitution never intended to invest judges with a discretion, which cannot be tried and measured by the plain and palpable standard of law; and in all the cases put by Mr. Bearcroft, no such loose discretion is exercised as must be entertained by a judgment on a seditious libel, and therefore the cases are not parallel.

On a special verdict for murder, the life of the prisoner does not depend upon the religious, moral, or philosophical ideas of the judges, concerning the nature of homicide:—no; precedents are searched for, and if he is condemned at all, he is judged exactly by the same rule as others have been judged by before him; his conduct is brought to a precise, clear, intelligible standard, and cautiously measured by it: it is the law, therefore, and not the judge, which condemns him.—It is the same in all indictments, or civil actions, for slander upon individuals.

Reputation is a personal right of the subject, indeed the most valuable of any, and it is therefore secured by law, and all injuries to it clearly ascertained. Whatever slander hurts a man in his trade,—subjects him to danger of life, liberty, or loss of property,—or tends to render him infamous, is the subject of an action, and in some instances of an indictment; but in all these cases, where the *malus animus* is found by the jury, the judges are in like manner a safe repository of the legal consequence; because such libels may be brought to a well-known standard of strict and positive law:—they leave no discretion in the judges:—the determination of what words, when written or spoken of another, are actionable, or the subject of an indictment, leaves no more latitude to a court sitting in judgment on the record, than a question of title does in a special verdict in ejectment.

But I beseech your lordship to consider, by what rule the legality or illegality of this Dialogue is to be decided by the Court as a

question of law upon the record.—Mr. Bearcroft has admitted in the most unequivocal terms (what indeed it was impossible for him to deny), that every part of it, when viewed in the abstract, was legal; but he says, there is a great distinction to be taken between speculation and exhortation, and that it is this latter which makes it a libel.—I readily accede to the truth of the observation; but how your lordship is to determine that difference as a question of law, is past my comprehension:—for if the Dialogue in its phrase and composition be general, and its libellous tendency arises from the purpose of the writer, to raise discontent by a seditious application of legal doctrines,—that purpose is surely a question of fact if ever there was one, and must therefore be distinctly averred in the indictment, to give the cognizance of it as a fact to the jury, without which no libel can possibly appear upon the record: this is well known to be the only office of the innuendo; because the judges can presume nothing, which the strictest rules of grammar do not warrant them to collect intrinsically from the writing itself.

Circumscribed by the record, your lordship can form no judgment of the tendency of this Dialogue to excite sedition by any thing but the mere words: you must look at it as if it were an old manuscript dug out of the ruins of Herculaneum;—you can collect nothing from the time when, or the circumstances under which it was published;—the person by whom, and those amongst whom it was circulated; yet these may render a paper at one time, and under some circumstances, dangerously wicked and seditious, which at another time, and under different circumstances, might be innocent and highly meritorious.—If puzzled by a task so inconsistent with the real sense and spirit of judicature, your lordship should spurn the fetters of the record, and, judging with the reason rather than the infirmities of men, should take into your consideration the state of men's minds on the subject of equal representation at this moment, and the great disposition of the present times to revolution in government:—if, reading the record with these impressions, your lordships should be led to a judgment not warranted by an abstract consideration of the record, then, besides that such a judgment would be founded on facts not in evidence before the Court, and not within its jurisdiction if they were,—let me farther remind your lordships, that even if those objections to the premises were removed, the conclusion would be no conclusion of law: your decision on the subject might be very sagacious as politicians, as moralists, as philosophers, or as licensers of the press, but they would have no resemblance to the judgments of an English court of justice, because it could have no warrant from the act of your predecessors, nor afford any precedent to your successors.

But all these objections are perfectly removed, when the seditious tendency of a paper is considered as a question of fact: we are then relieved from the absurdity of legal discussion separated from all the facts from which alone the law can arise; for the jury can do what (as I observed before) your lordships cannot do in judging by the record;—they can examine by *evidence* all those circumstances that tend to establish the seditious tendency of the paper, from which the Court is shut out:—they may know themselves, or it may be proved before them, that it has excited sedition already:—they may collect from witnesses that it has been widely circulated, and seditiously understood: or, if the prosecution (as is wisest) precedes these consequences, and the reasoning must be *a priori*, surely gentlemen living in the country are much better judges than your lordship, what has or has not a tendency to disturb the neighbourhood in which they live, and that very neighbourhood is the forum of criminal trial.

If they know that the subject of the paper is the topic that agitates the country around them:—if they see danger in that agitation, and have reason to think that the publisher must have intended it: they say he is guilty.—If, on the other hand, they consider the paper to be legal, and enlightened in principle;—likely to promote a spirit of activity and liberty in times when the activity of such a spirit is essential to the public safety, and have reason to believe it to be written and published in that spirit, they say, as they ought to do, that the writer or the publisher is not guilty.—Whereas your lordships' judgment upon the language of the record must ever be in the pure abstract;—operating blindly and indiscriminately upon all times, circumstances, and intentions;—making no distinction between the glorious attempts of a Sidney or a Russell, struggling against the terrors of despotism under the Stuarts, and those desperate adventurers of the year 1745, who libelled the person, and excited rebellion against the mild and gracious government, of our late excellent sovereign king George the second.

My lord, if the independent gentlemen of England are thus better qualified to decide from cause of knowledge, it is no offence to the Court to say, that they are full as likely to decide with impartial justice as judges appointed by the crown.—Your lordships have but a life interest in the public property, but they have an inheritance in it for their children. Their landed property depends upon the security of the government, and no man who wantonly attacks it can hope or expect to escape from the selfish lenity of a jury.—On the first principle of human action they must lean heavily against him.—It is only when the pride of Englishmen is insulted by such doctrines as I am opposing to day, that they may be betrayed into a verdict delivering

the guilty, rather than surrender the rights by which alone innocence in the day of danger can be protected.

I venture therefore to say, in support of one of my original propositions, that where a writing indicted as a libel, neither contains, nor is averred by the indictment to contain, any slander of an individual, so as to fall within those rules of law which protect personal reputation, but whose criminality is charged to consist (as in the present instance) in its tendency to stir up general discontent, that the trial of such an indictment neither involves, nor can in its obvious nature involve, any abstract question of law for the judgment of a court, but must wholly depend upon the judgment of the jury on the tendency of the writing itself, to produce such consequences, when connected with all the circumstances which attended its publication.

It is unnecessary to push this part of the argument farther, because I have heard nothing from the bar against the position which it maintains: none of the gentlemen have, to my recollection, given the Court any one single reason, good or bad, why the *tendency* of a paper to stir up discontent against government, separated from all the circumstances which are ever shut out from the record, ought to be considered as an abstract question of law: they have not told us where we are to find any matter in the books to enable us to argue such questions before the Court; or where your lordships yourselves are to find a rule for your judgments on such subjects.—I confess that to me it looks more like legislation, or arbitrary power, than English judicature, if the Court can say, This is a criminal writing, *not* because we know that mischief was intended by its author, or is even contained in itself, but because fools believing the one and the other may do mischief in their folly.—The suppression of such writings under particular circumstances may be wise policy in a state, but upon what principle it can be criminal law in England to be settled in the abstract by judges, I confess with humility, that I have no organs to understand.

Mr. Leicester felt the difficulty of maintaining such a proposition by any argument of law, and therefore had recourse to an argument of fact. ‘If,’ says my learned friend, ‘what is or is not a seditious libel, be not a question of law for the court, but of fact for the jury, upon what principle do defendants found guilty of such libels by a general verdict, defeat the judgment for error on the record: and what is still more in point, upon what principle does Mr. Erskine himself, if he fails in his present motion, mean to ask your lordships to arrest this very judgment by saying that the Dialogue is not a libel?’

My lord, the observation is very ingenious, and God knows the argument requires that it should;—but it is nothing more.—The arrest of judgment which follows after a verdict of guilty for publishing a writing, which on in-

spection of the record exhibits to the court no specific offence against the law, is no impeachment of my doctrine.—I never denied such a jurisdiction to the court.—My position is, that no man shall be punished for the criminal breach of any law, until a jury of his equals have pronounced him guilty in mind as well as in act. *Actus non facit reum nisi mens sit rea.*

But I never asserted that a jury had the power to *make* criminal law as well as to administer it; and therefore it is clear that they cannot deliver over a man to punishment if it appears by the record of his accusation, which it is the office of judicature to examine, that he has not offended against any positive law; because, however criminal he may have been in his disposition, which is a fact established by the verdict, yet statute and precedents can alone decide what is by law an *indictable* offence.

If, for instance, a man were charged by an *indictment* with having held a discourse in words defamatory, and were found guilty by the jury, it is evident that it is the province of the court to arrest that judgment; because though the jury have found that he spoke the words as laid in the indictment, with the malicious intention charged upon him, which they, and they only, could find; yet as the words are not punishable by indictment, as when committed to writing, the court could not pronounce judgment; the declaration of the jury, that the defendant was guilty in manner and form as accused, could evidently never warrant a judgment, if the accusation itself contained no charge of an offence against the law.

In the same manner, if a butcher were indicted for *privately* putting a sheep to causeless and unnecessary torture in the exercise of his trade, but not in public view, so as to be productive of evil example, and the jury should find him guilty, *I am afraid* that no judgment could follow; because, though done *malo animo*, yet neither statute nor precedent have perhaps determined it to be an indictable offence;—it would be difficult to draw the line. An indictment will not lie for every inhuman neglect of the sufferings of the smallest innocent animals which Providence has subjected to us.

“Yet the poor beetle which we tread upon,
In corporal suffering feels a pang as great
As when a giant dies.”

A thousand other instances might be brought of acts base and immoral, and prejudicial in their consequences, which are not yet indictable by law.

In the case of the King against Brewer, in Cowper’s Reports, it was held that *knowingly* exposing to sale and selling gold under sterling for standard gold, is not indictable; because the act refers to goldsmiths only, and private cheating is not a common-law offence.—Here too the declaration of the jury that

the defendant is guilty in manner and form as accused, does not change the nature of the accusation: the verdict does not go beyond the charge; and if the charge be invalid in law, the verdict must be invalid also. All these cases therefore, and many similar ones which might be put, are clearly consistent with my principle; I do not seek to erect jurors into legislators or judges: there must be a rule of action in every society which it is the duty of the legislature to create, and of judicature to expound when created.—I only support their right to determine guilt or innocence where the crime charged is blended by the general issue with the intention of the criminal; more especially when the quality of the act itself, even independent of that intention, is not measurable by any precise principle or precedent of law, but is inseparably connected with the time when, the place where, and the circumstances under which, the defendant acted.

My lord, in considering libels of this nature as opposed to slander on individuals to be mere questions of fact, or at all events to contain matter fit for the determination of the jury; I am supported not only by the general practice of courts, but even of those very practitioners themselves, who in prosecuting for the crown have maintained the contrary doctrine.

Your lordships will, I am persuaded, admit that the general practice of the profession, more especially of the very heads of it, prosecuting too for the public, is strong evidence of the law. Attorney Generals have seldom entertained such a jealousy of the king's judges in state prosecutions, as to lead them to make presents of jurisdiction to juries, which did not belong to them of right by the constitution of the country.—Neither can it be supposed, that men in high office and of great experience, should in every instance, though differing from each other in temper, character, and talents, uniformly fall into the same absurdity of declaiming to juries upon topics totally irrelevant, when no such inconsistency is found to disfigure the professional conduct of the same men in other cases.—Yet I may appeal to your lordships' recollection, without having recourse to the State Trials, whether upon every prosecution for a seditious libel within living memory, the Attorney General has not uniformly stated such writings at length to the jury, pointed out their seditious tendency which rendered them criminal, and exerted all his powers to convince them of their illegality, as the very point on which their verdict for the crown was to be founded.

On the trial of Mr. Horne, for publishing an advertisement in favour of the widows of those American subjects who had been murdered by the king's troops at Lexington,* did the present Chancellor, then Attorney General, content himself with saying that he had proved the publication, and that the criminal

quality of the paper which raised the legal inference of guilt against the defendant, was matter for the court? No, my lord; he went at great length into its dangerous and pernicious tendency, and applied himself with skill and ability to the understandings and the consciences of the jurors. This instance is in itself decisive of his opinion: that great magistrate could not have acted thus upon the principle contended for to-day;—he never was an idle declaimer;—close and masculine argument is the characteristic of his understanding.

The character and talents of the late Lord Chief Justice De Grey, no less intitle me to infer his opinion from his uniform conduct.—In all such prosecutions while he was in office, he held the same language to juries; and particularly in the case of the King against Woodfall, to use the expression of a celebrated writer on the occasion, 'he tortured his faculties for more than two hours, to convince them that Junius's letter was a libel.'

The opinions of another crown lawyer, who has since passed through the first offices of the law, and filled them with the highest reputation, I am not driven to collect alone from his language as an Attorney General; because he carried them with him to the seat of justice.—Yet one case is too remarkable to be omitted.

Lord Camden prosecuting Dr. Shebbeare, told the jury that he did not desire their verdict upon any other principle, than their solemn conviction of the truth of the information, which charged the defendant with a wicked design, to alienate the hearts of the subjects of this country from their king upon the throne.

To complete the account: my learned friend Mr. Bearcroft, though last not least in favour, upon this very occasion, spoke above an hour to the jury at Shrewsbury, to convince them of the libellous tendency of the Dialogue, which soon afterwards the learned judge desired them wholly to dismiss from their consideration, as matter with which they had no concern.—The real fact is, that the doctrine is too absurd to be acted upon;—too distorted in principle, to admit of consistency in practice;—it is contraband in law, and can only be smuggled by those who introduce it:—it requires great talents and great address to hide its deformity:—in vulgar hands it becomes contemptible.

Having supported the rights of juries, by the uniform practice of crown lawyers, let us now examine the question of authority, and see how this court itself, and its judges, have acted upon trials for libels in former times; for, according to lord Raymond, in Franklin's case (as cited by Mr. Justice Buller, at Shrewsbury), the principle I am supporting, had, it seems, been only broached about the year 1731, by some men of party spirit, and then too for the very first time.

My lord, such an observation in the mouth

* See the Case in this Collection, Vol. 20, p. 651.

of lord Raymond, proves how dangerous it is to take up as doctrine every thing flung out at *Nisi Prius*; above all, upon subjects which engage the passions and interests of government.—The most solemn and important trials with which history makes us acquainted, discussed too at the bar of this court, when filled with judges the most devoted to the crown, afford the most decisive contradiction to such an unfounded and unguarded assertion.

In the famous case of the Seven Bishops, the question of libel or no libel was held unanimously by the court of King's-bench trying the cause at the bar, to be matter for the consideration and determination of the jury; and the bishops' petition to the king, which was the subject of the information, was accordingly delivered to them, when they withdrew to consider of their verdict.

Thinking this case decisive, I cited it at the trial, and the answer it received from Mr. Bearcroft was, that it had no relation to the point in dispute between us, for that the bishops were acquitted not upon the question of libel, but because the delivery of the petition to the king was held to be no publication.

I was not a little surprised at this statement, but my turn of speaking was then past; fortunately to-day it is my privilege to speak last, and I have now lying before me the fifth volume of the State Trials, where the case of the Bishops is printed, and where it appears that the publication was expressly proved:—that nothing turned upon it in the judgment of the Court,—and that the charge turned wholly upon the question of libel, which was expressly left to the jury by every one of the judges.—Lord chief-justice Wright, in summing up the evidence, told them that a question had at first arisen about the publication, it being insisted on, that the delivery of the petition to the king had not been proved; that the Court was of the same opinion, and that he was just going to have directed them to find the Bishops not guilty, when in came my Lord President (*such sort of witnesses were no doubt always at hand when wanted*), who proved the delivery to his majesty. 'Therefore,' continued the Chief Justice, 'if you believe it was the same petition, it is a publication sufficient, and we must therefore come to inquire whether it be a libel.'

He then gave his reasons for thinking it within the case *de libellis fumosis*, and concluded by saying to the jury, 'In short, I must give you my opinion: I do take it to be a libel; if my brothers have any thing to say to it, I suppose they will deliver their opinion.' What opinion?—not that the jury had no jurisdiction to judge of the matter, but an opinion for the express purpose of enabling them to give that judgment, which the law required at their hands.

Mr. Justice Holloway then followed the Chief Justice; and so pointedly was the ques-

tion of libel or no libel, and not the publication, the only matter which remained in doubt, and which the jury, with the assistance of the Court, were to decide upon; that when the learned judge went into the facts which had been in evidence, the Chief Justice said to him, 'Look you; by the way, brother, I did not ask you to sum up the evidence, but only to deliver your opinion to the jury, whether it be a libel or no.' The Chief Justice's remark, though it proves my position, was, however, very unnecessary; for but a moment before, Mr. Justice Holloway had declared he did not think it was a libel, but addressing himself to the jury had said, 'It is left to you, gentlemen.'

Mr. Justice Powell, who likewise gave his opinion that it was no libel, said to the jury, 'But the matter of it is before you, and I leave the issue of it to God and your own consciences;' and so little was it in idea of any one of the Court, that the jury ought to found their verdict solely upon the evidence of the publication, without attending to the criminality or innocence of the petition, that the Chief Justice himself consented, on their withdrawing from the bar, that they should carry with them all the materials for coming to a judgment as comprehensive as the charge; and indeed expressly directed that the information,—the libel,—the declarations under the great seal,—and even the Statute-book, should be delivered to them.

The happy issue of this memorable trial, in the acquittal of the bishops by the jury, exercising jurisdiction over the whole charge, freely admitted to them as legal even by king James's judges, is admitted by two of the gentlemen to have prepared and forwarded the glorious æra of the Revolution. Mr. Bower, in particular, spoke with singular enthusiasm concerning this verdict, choosing (for reasons sufficiently obvious) to ascribe it to a special miracle wrought for the safety of the nation, rather than to the right lodged in the jury to save it by its laws and constitution.

My learned friend, finding his argument like nothing upon the earth, was obliged to ascend into heaven to support it:—having admitted that the jury not only acted like just men towards the bishops, but as patriot citizens towards their country, and not being able, without the surrender of his whole argument, to allow either their public spirit or their private justice to have been consonant to the laws, he is driven to make them the instruments of divine Providence to bring good out of evil, and holds them up as men inspired by God to perjure themselves in the administration of justice, in order, by the by, to defeat the effects of that wretched system of judicature, which he is defending to-day as the constitution of England: for if the king's judges could have decided the petition to be a libel, the Stuarts might yet have been on the throne.

My lord, this is the argument of a priest, not of a lawyer: and even if faith and not law were to govern the question, I should be as far from subscribing to it as a religious opinion.

No man believes more firmly than I do that God governs the whole universe by the gracious dispensations of his providence, and that all the nations of the earth rise and fall at his command: but then this wonderful system is carried on by the natural, though to us the often hidden, relation between effects and causes, which wisdom adjusted from the beginning, and which foreknowledge at the same time rendered sufficient, without disturbing either the laws of nature or of civil society.

The prosperity and greatness of empires ever depended, and ever must depend, upon the use their inhabitants make of their reason in devising wise laws, and the spirit and virtue with which they watch over their just execution: and it is impious to suppose, that men, who have made no provision for their own happiness or security in their attention to their government, are to be saved by the interposition of Heaven in turning the hearts of their tyrants to protect them.

But if every case in which judges have left the question of libel to juries in opposition to law, is to be considered as a miracle, England may vie with Palestine; and lord chief justice Holt steps next into view as an apostle; for that great judge, in Tutchin's case, left the question of libel to the jury in the most unambiguous terms.—After summing up the evidence of writing and publishing, he said to them as follows:

'You have now heard the evidence, and you are to consider whether Mr. Tutchin be guilty. They say they are innocent papers, and no libels; and they say nothing is a libel but what reflects upon some particular person.—But this is a very strange doctrine, to say, it is not a libel reflecting on the government, endeavouring to possess the people that the government is mal-administered by corrupt persons, that are employed in such or such stations either in the navy or army.'

'To say that corrupt officers are appointed to administer affairs, is certainly a reflection on the government. If people should not be called to account for possessing the people with an ill opinion of the government, no government can subsist. For it is very necessary for all governments that the people should have a good opinion of it: and nothing can be worse to any government, than to endeavour to procure animosities, as to the management of it; this has been always looked upon as a crime, and no government can be safe without it be punished.'

Having made these observations, did the Chief Justice tell the jury, that whether the

publication in question fell within that principle so as to be a libel on government, was a matter of law for the Court, with which they had no concern?—Quite the contrary: he considered the seditious tendency of the paper as a question for their sole determination, saying to them,

'Now you are to consider, whether these words I have read to you, do not tend to beget an ill opinion of the administration of the government: to tell us, that those that are employed know nothing of the matter, and those that do know are not employed. Men are not adapted to offices, but offices to men, out of a particular regard to their interest, and not to their fitness for the places. This is the purport of these papers.'

In citing the words of judges in judicature I have a right to suppose their discourse to be pertinent and relevant, and that when they state the defendant's answer to the charge, and make remarks on it, they mean that the jury should exercise a judgment under their direction: this is the practice we must certainly impute to lord Holt, if we do him the justice to suppose that he meant to convey the sentiments which he expressed.—So that when we come to sum up this case, I do not find myself so far behind the learned gentleman even in point of express authority; putting all reason, and the analogies of law which unite to support me, wholly out of the question.

There is court of King's-bench against court of King's-bench;—chief justice Wright against chief justice Lee;—and lord Holt against lord Raymond: as to living authorities, it would be invidious to class them; but it is a point on which I am satisfied myself, and on which the world will be satisfied likewise if ever it comes to be a question.

But even if I should be mistaken in that particular, I cannot consent implicitly to receive any doctrine as the law of England, though pronounced to be such by magistrates the most respectable, if I find it to be in direct violation of the very first principles of English judicature.—The great jurisdictions of the country are unalterable except by parliament, and, until they are changed by that authority, they ought to remain sacred;—the judges have no power over them.—What parliamentary abridgment has been made upon the rights of juries since the trial of the Bishops, or since Tutchin's case, when they were fully recognised by this Court?—None. Lord Raymond and lord chief justice Lee ought therefore to have looked to their predecessors for the law, instead of setting up a new one for their successors.

But supposing the Court should deny the legality of all these propositions, or, admitting their legality, should resist the conclusions I have drawn from them; then I have recourse to my last proposition, in which I am supported even by all those authorities, on which

the learned judge relies for the doctrines contained in his charge; to wit,

‘That in all cases where the mischievous intention, which is agreed to be the essence of the crime, cannot be collected by simple inference from the fact charged, because the defendant goes into evidence to rebut such inference, the intention becomes then a pure unmixed question of fact, for the consideration of the jury.’

I said the authorities of the King against Woodfall and Almon were with me. In the first, which is reported in 5th Burrow, your lordship expressed yourself thus:—‘Where an act, in itself indifferent, becomes criminal when done with a particular intent, *there the intent must be proved and found:—but where the act is itself unlawful, as in the case of a libel, the proof of justification or excuse lies on the defendant: and in failure thereof, the law implies a criminal intent.*’ Most luminously expressed to convey this sentiment, viz. that when a man publishes a libel, and has nothing to say for himself,—no explanation or exculpation,—a criminal intention need not be proved:—I freely admit that it need not;—it is an inference of common sense, not of law.—But the publication of a libel, does not conclusively show criminal intent, but is only an implication of law, in failure of the defendant’s proof. Your lordship immediately afterwards in the same case explained this farther. ‘There may be cases where the publication may be justified or excused as lawful or innocent; for no fact which is not criminal, though the paper be a libel, can amount to such a publication of which a defendant ought to be found guilty.’ But no question of that kind arose at the trial (i. e. on the trial of Woodfall).—Why?—Your lordship immediately explained why—‘*Because the defendant called no witnesses;*’ expressly saying, that the publication of a libel is not in itself a crime, unless the intent be criminal; and that it is not merely in mitigation of punishment, but that *such* a publication does not warrant a verdict of Guilty.

In the case of the King against Almon, a magazine containing one of Junius’s Letters, was sold at Almon’s shop; and there was proof of that sale at the trial. Mr. Almon called no witnesses, and was found guilty. To found a motion for a new trial, an affidavit was offered from Mr. Almon, that he was not privy to the sale, nor knew his name was inserted as a publisher; and that this practice of booksellers being inserted as publishers by their correspondents without notice, was common in the trade.

Your lordship said, ‘Sale of a book in a bookseller’s shop, is *prima facie* evidence of publication by the master, and the publication of a libel is *prima facie* evidence of criminal intent: it stands good till answered by the defendant: it must stand till contradicted or explained; and if not contra-

dicted; explained, or exculpated, becomes tantamount to conclusive, when the defendant calls no witnesses.’

Mr. Justice Aston said, ‘*Prima facie* evidence not answered is sufficient to ground a verdict upon: if the defendant had a sufficient excuse, he might have proved it at the trial: his having neglected it where there was no surprise, is no ground for a new one.’ Mr. Justice Willes and Mr. Justice Ashhurst agreed upon those express principles.

These cases declare the law beyond all controversy to be, that publication, even of a libel, is no conclusive proof of guilt, but only *prima facie* evidence of it till answered; and that if the defendant can show that his intention was not criminal, he completely rebuts the inference arising from the publication; because, though it remains true, that he published, yet, according to your lordship’s express words, it is not such a publication of which a defendant ought to be found guilty. Apply Mr. Justice Buller’s summing up, to this law, and it does not require even a legal apprehension to distinguish the repugnancy.

The advertisement was proved to convince the jury of the dean’s motive for publishing;—Mr. Jones’s testimony went strongly to aid it;—and the evidence to character, though not sufficient in itself, was admissible to be thrown into the scale.—But not only no part of this was left to the jury, but the whole of it was expressly removed from their consideration, although, in the cases of Woodfall and Almon, it was expressly laid down to be within their cognizance, and a complete answer to the charge if satisfactory to the minds of the jurors.

In support of the learned judge’s charge, there can be therefore but the two arguments, which I stated on moving for the rule:—either that the defendant’s evidence, namely, the advertisement;—Mr. Jones’s evidence in confirmation of its being *bona fide*;—and the evidence to character, to strengthen that construction, were not sufficient proof that the dean believed the publication meritorious, and published it in vindication of his honest intentions:—or else, that, even admitting it to establish that fact, it did not amount to such an exculpation as to be evidence on Not Guilty, so as to warrant a verdict.—I still give the learned judge the choice of the alternative.

As to the first, viz. whether it showed honest intention in point of fact: *that* was a question for the jury. If the learned judge had thought it was not sufficient evidence to warrant the jury’s believing that the dean’s motives were such as he had declared them; I conceive he should have given his opinion of it as a point of evidence, and left it there.—I cannot condescend to go farther; it would be ridiculous to argue a self-evident proposition.

As to the second, viz. that even if the jury had believed from the evidence, that the

dean's intention was wholly innocent, it would not have warranted them in acquitting, and therefore should not have been left to them upon Not Guilty;—*that* argument can never be supported.—For, if the jury had declared, 'We find that the dean published this pamphlet, whether a libel or not we do not find: and we find farther, that, believing it in his conscience to be meritorious and innocent, he, *bonâ fide*, published it with the prefixed advertisement, as a vindication of his character from the reproach of seditious intentions, and not to excite sedition;' it is impossible to say, without ridicule, that on such a special verdict the Court could have pronounced a criminal judgment.

Then why was the consideration of that evidence, by which those facts might have been found, withdrawn from the jury, after they brought in a verdict Guilty of publishing *ONLY*, which, in the King against Woodfall, was only said not to negative the criminal intention, because the defendant called no witnesses?—Why did the learned judge confine his enquiries to the innuendos, and finding them agreed to, direct the epithet of Guilty, without asking the jury if they believed the defendant's evidence to rebut the criminal inference?—Some of them positively meant to negative the criminal inference, by adding the word *only*, and all would have done it, if they had thought themselves at liberty to enter upon that evidence.—But they were told expressly that they had nothing to do with the consideration of that evidence, which, if believed, would have warranted that verdict.—The conclusion is evident;—if they had a right to consider it, and their consideration might have produced such a verdict, and if such a verdict would have been an acquittal, it must be a misdirection.

'But,' says Mr. Bower, 'if this advertisement, prefixed to the publication, by which the dean professed his innocent intention in publishing it, should have been left to the jury as evidence of that intention, to found an acquittal on, even taking the Dialogue to be a libel; no man could ever be convicted of publishing any thing, however dangerous: for he would only have to tack an advertisement to it by way of preface, professing the excellence of its principles and the sincerity of his motives, and his defence would be complete.'

My lord, I never contended for any such position. If a man of education, like the dean, were to publish a writing so palpably libellous, that no ignorance or misapprehension imputable to such a person could prevent his discovering the mischievous design of the author; no jury would believe such an advertisement to be *bonâ fide*, and would therefore be bound in conscience to reject it, as if it had no existence: the effect of such evidence must be to convince the jury of the defendant's purity of mind, and must therefore depend upon the nature of the writing

itself, and all the circumstances attending its publication.

If, upon reading the paper and considering the whole of the evidence, they have reason to think that the defendant did not believe it to be illegal, and did not publish it with the seditious purpose charged by the indictment;—he is not guilty upon any principle or authority of law, and would have been acquitted even in the Star Chamber: for it was held by that court in Lambe's case,* in the eighth year of king James the first, as reported by lord Coke, who then presided in it, that every one who should be convicted of a libel, must be the writer or contriver, or a malicious publisher, knowing it to be a libel.

This case of Lambe being of too high authority to be opposed, and too much in point to be passed over, Mr. Bower endeavours to avoid its force by giving it a new construction of his own: he says, that not knowing a writing to be a libel, in the sense of that case, means, not knowing the contents of the thing published; as by conveying papers sealed up, or having a sermon and a libel, and delivering one by mistake for the other.—In such cases he says, *ignorantia facti excusat*, because the mind does not go with the act; and *ignorantia legis non excusat*; and therefore if the party knows the contents of the paper which he publishes, his mind goes with the act of publication, though he does not find out any thing criminal, and he is bound to abide by the legal consequences.

This is to make criminality depend upon the consciousness of an act, and not upon the knowledge of its quality, which would involve lunatics and children in all the penalties of criminal law:—for whatever they do is attended with consciousness, though their understanding does not reach to the consciousness of offence.

The publication of a libel, not believing it to be one after having read it, is a much more favourable case than publishing it unread by mistake: the one, nine times in ten, is a culpable negligence, which is no excuse at all; for a man cannot throw papers about the world without reading them, and afterwards say he did not know their contents were criminal: but if a man reads a paper, and not believing it to contain any thing seditious, having collected nothing of that tendency himself,—publishes it among his neighbours as an innocent and useful work, he cannot be convicted as a criminal publisher.—How he is to convince the jury that his purpose was innocent, though the thing published be a libel, must depend upon circumstances; and these circumstances he may, on the authority of all the cases ancient and modern, lay before the jury in evidence; because if he can establish the innocence of his mind, he negatives the very gist of the indictment.

'In all crimes,' says lord Hale in his Pleas

* 9 Co. 59, b.; Moor 813, S. C.

of the Crown, 'the *intention* is the principal consideration: it is the mind that makes the taking of another's goods to be felony, or a bare trespass only: it is impossible to prescribe all the circumstances evidencing a felonious intent, or the contrary; but the same must be left to the attentive consideration of judge and jury; wherein the best rule is, *in dubiis*, rather to incline to acquittal than conviction.'

In the same work he says, 'By the statute of Philip and Mary, touching importation of coin counterfeit of foreign money, it must, to make it treason, be with the intent to utter and make payment of the same; and the intent in this case may be tried and found by circumstances of FACT by words, letters, and a thousand evidences besides the bare doing of the fact.'

This principle is illustrated by frequent practice, where the intention is found by the jury as a fact in a special verdict.—It occurred not above a year ago, at East Grinstead, on an indictment for burglary, before Mr. Justice Ashhurst, where I was myself counsel for the prisoner.—It was clear upon the evidence that he had broken into the house by force in the night, but I contended that it appeared from proof, that he had broken and entered with an intent to rescue his goods, which had been seized that day by the officers of excise: which rescue, though a capital felony by modern statute, was but a trespass, temp. Henry VIII. and consequently not a burglary.

Mr. Justice Ashhurst saved this point of law, which the twelve judges afterwards determined for the prisoner; but, in order to create the point of law, it was necessary that the prisoner's intention should be ascertained as a fact; and for this purpose, the learned judge directed the jury to tell him, with what intention they found that the prisoner broke and entered the house, which they did by answering, 'To rescue his goods;' which verdict was recorded.

In the same manner, in the case of the King against Pierce, at the Old Bailey, the intention was found by the jury as a fact in the special verdict. The prisoner having hired a horse and afterwards sold him, was indicted for felony; but the judges doubting whether it was more than a fraud, unless he originally hired him *intending to sell him*, recommended it to the jury to find a special verdict, comprehending their judgment of his intention, from the evidence. Here the quality of the act depended on the intention, which intention it was held to be the exclusive province of the jury to determine, before the judges could give the act any legal denomination.

My lord, I am ashamed to have cited so many authorities to establish the first elements of the law, but it has been my fate to find them disputed. The whole mistake arises from confounding criminal with civil cases.—If a printer's servant, without his master's

consent or privity, inserts a slanderous article against me in his newspaper, I ought not in justice to indict him; and if I do, the jury on such proof should acquit him; but it is no defence to an *action*, for he is responsible to me *civiliter* for the damage which I have sustained from the newspaper, which is his property.—Is there any thing new in this principle? so far from it, that every student knows it as applicable to all other cases; but people are resolved, from some fatality or other, to distort every principle of law into nonsense, when they come to apply it to printing; as if none of the rules and maxims which regulate all the transactions of society had any reference to it.

If a man rising in his sleep, walks into a china-shop, and breaks every thing about him; his being asleep is a complete answer to an *indictment* for a trespass; but he must answer in an *action* for every thing he has broken.

If the proprietor of the York coach, though asleep in his bed at that city, has a drunken servant on the box at London, who drives over my leg and breaks it, he is responsible to me in *damages* for the accident; but I cannot indict him as the criminal author of my misfortune.—What distinction can be more obvious and simple?

Let us only then extend these principles, which were never disputed in other criminal cases, to the crime of publishing a libel; and let us at the same time allow to the jury, as our forefathers did before us, the same jurisdiction in that instance, which we agree in rejoicing to allow them in all others, and the system of English law will be wise, harmonious, and complete.

My lord, I have now finished my argument, having answered the several objections to my five original propositions, and established them by all the principles and authorities which appear to me to apply, or to be necessary for their support.—In this process I have been unavoidably led into a length not more inconvenient to the Court than to myself, and have been obliged to question several judgments, which had been before questioned and confirmed.

They however who may be disposed to censure me for the zeal which has animated me in this cause, will at least, I hope, have the candour to give me credit for the sincerity of my intentions:—it is surely not my interest to stir up opposition to the decided authorities of the Court in which I practise: with a seat here within the bar, at my time of life, and looking no farther than myself, I should have been contented with the law as I found it, and have considered *how little* might be said with decency, rather than *how much*;—but feeling as I have ever done upon the subject, it was

* "Exousat aut extenuat delictum in capitalibus quod non operatur idem in civilibus." Lord Bacon's Maxims, Reg. 7.

impossible I should act otherwise.—It was the first command and counsel to my youth, always to do what my conscience told me to be my duty, and to leave the consequences to God. I shall carry with me the memory, and, I hope, the practice, of this parental lesson to the grave: I have hitherto followed it, and have no reason to complain that the adherence to it has been even a temporal sacrifice;—I have found it, on the contrary, the road to prosperity and wealth; and shall point it out as such to my children. It is impossible in this country to hurt an honest man; but even if it were possible, I should little deserve that title, if I could, upon any principle, have consented to tamper or temporize with a question, which involves in its determination and its consequences, the liberty of the press;—and in that liberty, the very existence of every part of the public freedom.

Mr. Welch. My lord; I am of the same side with Mr. Erskine.—And after the full discussion which my learned friend has bestowed on every part of the important subject, submitted to your lordships, for your determination this day, it will not, I am sure, be thought necessary, for my client's interest, that I should take up much of the time of the court—I shall endeavour to confine myself, in my observations, principally, to a consideration of the origin, and progressive application of the hackneyed maxim so much relied on in different periods of legal history, and which the gentlemen on the other side wish to make use of on the present occasion.—I mean the maxim, ‘*ad questionem facti non respondent judices, ad questionem legis non respondent juratores.*’—Upon the true legal construction of which, it seems to be agreed, the present question in a great measure depends; as if this was intended to mark the distinct office of judge and jury.

To a plain man, but slightly acquainted with the first rudiments of our jurisprudence, it may appear reasonable and right, that the law should be explained by the one, and the fact determined by the other; and the maxim is admitted without hesitation. But it has always struck my mind, that this position, though true in principle, has been oftentimes greatly misapplied. It was never intended to mark out distinct and separate jurisdictions of the judge and jury at *Nisi Prius*, independent and exclusive of each other.

I will not pretend to say in what page of Bracton or Fleta we are to look for the origin of it; but sure I am, that in the time of those writers, it could never be understood in the sense which is now attempted to be put upon it; as it would be contradicting some of the best authenticated facts in legal history.

I take it, my lord, that this is one of those significant and comprehensive sentences, which it was the amusement of our old lawyers to frame, in order to convey in the shortest possible way, the grounds and principles of our

law; and that, by this maxim, they in truth meant no more than to say, “That, in the law of England it was the course of judicial proceedings, for all matters of law to be put to the judges to be determined upon; and all matters of fact to the jury;” and so it is; but how? Not (according to my poor judgment), in the way marked out by the learned judge at *Nisi Prius* upon the trial of this indictment: but it meant this, that an issue of law when it arose in pleading should be put by the party to the judges, and an issue of fact to the jury. If it is a point of law which the party pleads, he prays the judgment of the court upon it; and the court in giving their opinion on such prayer, may be truly said in the language of this maxim, *respondere*. If it is a point of fact, he prays it may be enquired of by the country, to which prayer the verdict of the jury may be considered as a response. Should a party in pleading do the reverse of this, and pray that a point of law might be enquired of by the jury, or pray the judgment of the court on a matter of fact, then would this maxim of the law ‘*ad questionem facti non respondent judices, ad questionem legis non respondent juratores,*’ be justly applied; which in other words, would be saying, you should, according to an old maxim of the law, have concluded to the court in one instance, and in the other, to the country.

This, my lord, I take to be the true sense and drift of the wise and sententious maxim so much observed upon. And I do seriously beg leave to contend, that it is not a rule for governing a trial by jury: but, if any thing, a rule and maxim of pleading. That it is not a rule for governing a trial by jury, I say, appears from the practice of the courts in the time when this maxim gained birth, and from the uniform and almost universal practice from thence, down to the present times, in all judicial inquiries, whether of a civil or a criminal nature.

But now, when the changes of time and circumstances, have rendered the appearance of things somewhat complicated, and arguments are raised on different sides, concerning their true nature; I know no promising method of investigation, but to recur to first principles—and the first principles of our law are to be looked for in its ancient history. We find in the early periods of our jurisprudence, that, notwithstanding the parties litigant might select some point of law or fact, to rest their case upon; yet the simplicity of those times gave such indulgence to the unlettered defendant, as to allow him to make a mere general denial of the charge; which denial must of necessity involve in it, both the fact and the law arising upon the fact, and therefore was properly called a general issue.

Here then an allegation was made, which contained both law and fact, and there needed some exposition of the maxim ‘*ad questionem facti, &c.*’ and ‘*ad questionem legis, &c.*’ to determine the party in the prayer he was to

make for the trial of the issue; which, as it contained both law and fact, did not, by the terms of the maxim, seem to belong singly to either: and the interpretation which the law has given in this instance, is peculiarly deserving of observation; for, as the plea was general, it was held the trial should be general also; and should therefore go to one, only, of the two tribunals; and such preference was given to the fact, before the law, and so much more sacred was the privilege of trial considered than the prerogative of judgment, that rather than the fact should not be tried by the proper jurisdiction, the wisdom of our ancestors ordained, that the law, also, should be determined by the same authority; that is, in the language of the law at this day, that a general issue should conclude to the country. Thus, my lord, if I may parody a maxim of the imperial code, it seems to be a rule of our law, and a rule of evidence in general issues, that 'jus sequitur forum facti.'

As a proof of this, (and a strong one, considering the nature of the trial,) may be adduced the trial in a writ of right by battle. When the issue was joined upon the mere right, and the combatants were produced to decide the issue, the law as well as fact were in their hands; and we hear of no judge, who felt such jealousy for the supposed duty of his office, as to interpose between the batons of the champions, *flagrante bello*, and claim part of the debate, as the share which peculiarly belonged to him to try his strength at, and to decide upon. If this seems extravagant and ridiculous, it is no fault of mine, the principle is the same when applied to this mode of trial and to others; and if the consequences, in this instance, display the absurdity of it, more than in others, it only answers, more happily, the purpose of a just criterion. This was the usual method of trying a general issue, in the early part of Henry 2, and the preceding times, up to the conquest; and extended to most other cases, besides a writ of right, whether criminal or civil. When the assize and the jury were introduced by that wise prince, in the place of the duel, there was yet no alteration in the particular subject now in question; the assize in some actions, and the jury in others, were substituted for the duel, but no law, no book, no record, no authority, printed or written, can be produced, to shew that any separation was then made between the law and the fact, but they were now given together, to the jurors, in the same manner, as to the combatants; as appears plainly from the forms of pleading, and from the authority of our old books and statutes.

To take one instance and examine it. The issue of 'nul tort, nul disseisin,' was the general issue in an assize of novel disseisin, and the tenant, consistently with this ancient maxim, and the exposition upon it, concluded by putting himself upon the assize for the truth of his denial. The assize, therefore, by the terms of the writ and record, were autho-

rized and compelled, to consider of every thing which would enable them to say, whether the tenant had committed the disseisin with which he was charged; and every one knows, that this might turn upon various points, which could only be determined upon legal ideas, and distinctions; an entry, a descent, a deed, and the like. The jurors were bound, difficult as it may seem, to take into their consideration many matters of this kind, before they were able to pronounce their conclusion, whether the tenant had committed a disseisin or not; and in doing this rightly, and according to law, they acted under the penalty of an attain. The danger into which unlettered jurors were brought by having all this burden of determining the law thrown upon their shoulders, was taken into consideration of the parliament in the time of Edward 1, and when the act for appointing justices of Nisi Prius was made, in stat. 2. West. ch. 30, this was thought, as your lordship remembers, a proper occasion to provide some relief for jurors, and it was enacted, "That the justices for taking assizes should not compel the jurors to say precisely whether it was a disseisin or no, so as they are willing to speak the truth of the fact, and require aid of the justices; but if they, of their own head, will say that it is disseisin, their verdict shall be admitted at their own peril."

This, your lordship sees, was intended to exonerate such jurors as felt and expressed themselves to be burdened with some part of their duty; but this was, provided they found the truth of the fact; and it was never meant to deprive them of the right to decide the law, or so much of it as they pleased to retain, much less to avoid deciding on any part of the fact.

Now, my lord, what was the law and the practice in taking assizes after this act? When the parliament had thus recognized the possibility of matter arising, which the judge would decide upon better than the jurors, did the judge, presuming upon that parliamentary intimation, make a division and apportionment of the matter arising at the trial of the assize, and did he venture to tell the jurors, "This is matter of fact, and this is matter of law; the latter I will take to myself to consider upon, you have nothing to do with it." Do we find this to have been the conduct of judges? I believe if ever there had been an example of it, some discerning juror might and would have ventured to expostulate in the terms of plain common sense, "My lord, we are sworn to try, whether the demandant unjustly, and without judgment, disseized the tenant, and the whole case has been laid before us; we chuse, as it is our duty, to decide the whole matter between the parties; but how are we to perform that duty, if you take part of the matter from us?" The good sense of the judges of those days, prevented such complaints, by establishing a course conformable with the old principle of

trials, and the practice recognized by the statute; they took upon them to explain such matters of law, as it should seem the jurors would wish to be advised upon, and so left the fact, accompanied with that advice, to be decided upon by the jurors: who still, as formerly, gave in the general verdict of disseisin or no disseisin, if they so pleased.

The statute I have been mentioning, introduced nothing new, except this, that ignorant judges were no longer to throw off their shoulders, the burden of determining points of law, compelling the jurors to find it, and run the hazard of an attain, if it turned out to be a wrong verdict in point of law. This is very different from the case of which we now complain. Before this statute, it was the usage for jurors to take the advice of judges, who were able and disposed to give it, and upon such advice, they found, if they pleased, a general verdict; or, if they were inclined, they might, before that act, have found the special matter, as is the opinion of lord Coke, (2 Inst. 425) and left the conclusion upon it for the judgment of the court. It is, therefore, partly by the equity of this statute, and partly from the former practice in other cases, that the modern method has obtained of a jury trying a general issue, and finding a general verdict after they had received the advice of the judge.

When judges had been long in the habit of doing their duty, by assisting the jurors with their advice in all matters of doubt, and that perhaps too readily; and when we consider the manner in which this is now transacted at Nisi Prius, I do not wonder, that the maxim which has been so often mentioned, should be applied in the sense contended for by the gentlemen on the other side. If a matter of law arises, the counsel (without the jury praying the advice of the judge) turns round to the bench stating a point which is for his lordship's consideration; the counsel on the other side do the same; the jury are at a distance, perfectly ignorant of what is going forward, and ready enough to acquiesce in what they are told plainly, or is plainly to be collected, viz. that they have nothing at all to do with the matter; and so it turns out; for after a sort of private conversation between the judge and counsel, his lordship tells the jury that the matter is so and so, and they must find a verdict accordingly; when a person has been often witness to such a method of ordering a trial upon a general issue, I do not wonder, that, before due consideration, he should be led into the idea, that the office of the judge was an independent and separate one, from that of the jury; and finding such a maxim as this in question, readily adopt it to explain the above appearance. And the learned judge seems to me to have resorted to it to support his present direction to the jury.

But no man, who reflects a moment, or who has traced the nature of a trial, upon the general issue, from the first origin of our law,

would be long deceived, by the appearance of things, into such a misconception; he would readily enough acknowledge the propriety of such an address to the judge, on a point of law; he would admit, that the jury did right, in acquiescing to receive that advice in the first instance, which upon their own request they are intitled to expect from the judge; but he would be able to reconcile both these, with the true and legal notion of the proceeding, namely, that the jury were in truth and construction of law, the persons who found the verdict containing both the law and the fact: that the judge was their assistant therein to advise the former; so that now, as in the early times of our law, the jury find both the law and fact, upon a general issue.

The observations I have ventured to state to your lordship, on the trial of a general issue, have been confined to civil cases; and I chose to begin with them, partly because the ancient examples, and particularly the statute Westminster 2d, belonged to civil actions; but chiefly, because, whatever I may establish upon the head of civil trials, will *a fortiori* be true as to criminal ones; for if the legal history of a trial of the general issue is the same in matters of crime, the leaving the law to be found by the jury in such cases, is less hardship upon them; the construction the law puts upon criminal acts being less artificial and complex, than that which it puts on civil transactions; a man who would not readily comprehend the legal notion of a descent, an entry, or a feoffment, might soon be satisfied of the whole law, upon the subject of robbery, burglary, larceny, libel, and the like.

That the condition of the judge and jury, upon the trial of the general issue, in matters of crime, was the same, as has been just stated in civil issues, is well known to those, who have looked into the history of our law; and little need be said on this head, in addition to what I have before submitted on the nature of civil trials. We know, that the guilt of a man was tried by the duel, that juries were substituted in the place of that barbarous judicature, about the same time, and in the same degree, as the like improvements were made in trying matters of property; and no more difference was introduced after this trial passed from the baton to the verdict, as to the relative situation of the judge, than in civil trials; the pleading was exactly the same, because regulated by the maxim so often mentioned, accompanied with the exposition of it I have before given. If the defendant alleged matter of law, and rested upon it, he prayed the judgment of the court; if he pleaded the general issue, by denying his guilt, he put himself upon the country for the truth of it. The jury therefore were the tribunal he looked to for the elucidation of his innocence, and the law upheld him in the choice he had made, when by the mouth of the cryer it is wished that God might send him a good deliverance. But, if a judge, acting upon the new-fangled

construction of that old position of law, should take part of the issue to himself, telling the jury they have nothing to do with it, because it is a point of law; in vain has the defendant put himself upon his country, the hopes of his deliverance are disappointed, and the jury who have been sworn well and truly to try and true deliverance make between the king and the defendant, are thus rendered ridiculous; part of the issue being wrested from them, and taken to another tribunal, which the law knows not; so that, altogether, this would not be a trial by jury, but a trial by the judge and the jury, having distinct and independent authority, exclusive of each other; one to enquire of the fact, and the other of the law; a tribunal which I trust, I have shewn, is not warranted by the principles of our ancient law, nor reconcileable to any true notion of judicial proceedings in this country.

This point is the very gist of the question, now before the court to determine, and I mean to contend unequivocally, and as a necessary conclusion from what I have said, that the law of England (paradoxical as it may seem) knows no such trial as that by judge and jury; or in other words, that, in all questions sent to a jury to be tried, the jury are the only known judges of that question, whether it turns upon law or fact; and the judge has no lawful authority to interpose, but by advice; which implies that, this, like all other advice, may be rejected by those, who are at liberty, and chuse to act without it. The judge, notwithstanding the rank of his office, and the advantage he derived from his knowledge of the law, over those who were the real tryers of the issue, yet being allowed to interfere with advice, only when called upon by the jury, as expressed by stat. 2. Westm. evidently was placed in a secondary light.—The law, in an instance a little similar to this, has given an opinion upon the relative character of such assistants and advisers to the proper judge of a court; your lordship knows, that by stat. 3 Hen. 7, c. for new modelling the Star Chamber, it was ordained, that the chancellor, treasurer, privy seal, or two of them, calling to them a lord spiritual and temporal of the council, should determine upon riots and other offences there mentioned. Upon this statute it became a question, whether the lords spiritual and temporal so called in were judges of this court; and it was held by all the justices in the time of Henry 7 that they were not; but only assistant and aiding to the chancellor, treasurer, or privy seal, or two of them, who were the only judges.—Now, my lord, by judge in this case we must understand the power to try and determine; and if a question had been put to those judges, on the nature of a trial on the general issue, what would they have said? they must upon the same principle have pronounced the judge who was present to advise, to be only assistant and aiding; and not properly a judge of the matter in question: and therefore, of course,

that the sole power to try and determine rested in the jury. Indeed the language of the law uniformly corresponds with this idea—while the jurors were considered as the persons to try the disseisin; the judge had only a commission *ad capiendas assisas*, to take the assize or verdict of the jurors, as if his situation on that occasion, was only to aid and assist; in a way, however, somewhat more than ministerial. And that this is the situation of a judge, when trying an issue (as the common expression is, but, as I beg leave to contend, when the jury are trying an issue,) seems to have been the opinion of all constitutional lawyers, and of every judge in this country, whose name and memory we are taught to revere.

When a burglary, robbery, or the like is trying, your lordships, in your address to the jury, explain to them the law arising upon the facts, and after such advice, you leave both to be tried and determined by the jury: instances of this kind are familiar to us all; and some of us have been witnesses to cases, in which the jury have taken upon them to disregard the advice of the judge; and find a general verdict in opposition to it; when this happens, who will say there is a remedy? your lordships know there is none; and that is a circumstance of itself sufficient to shew, they acted within the limits of their province.

On a late occasion, the relative situation of the judge and jury in criminal trials, appears to me to have been fully recognized and explained by a judge of very distinguished learning and talents, and whose opinion I may venture to say, will not be disregarded by your lordships. This was in the trial of colonel Gordon, at the Old Bailey. My learned friend has already, with great force of observation, taken notice of this case; I shall, therefore, forbear to trouble the court with the particulars of it again.

It is, my lord, in opposition to all these authorities, to history, to law, and to plain sense; that upon the trial of this indictment, as well as a few similar cases, (all of which I hope from this day, will be considered as waste paper in our report books), a different practice has been introduced: and the matter which ought to go to the jury for them to try and determine, has been mutilated, and made essentially defective. Instead of the jury being advised, whether the publication in question, was in point of law a libel or not, according to the practice of all judges in other criminal matters; instead of the fact and the law being committed to the jury together; that, in the intelligent words of Mr. Baron Eyre, they might compound their verdict out of both, the jury, in the present instance, were told, they had nothing to do with the libel, but that was to be decided upon by the court.

This, my lord, if I do not grossly err, is such a deception on the expectations and privileges of defendants who have put themselves upon their country, that, who is there but must

feel himself seriously alarmed at it? it is not only the cause of my client, but the cause of every man who may unhappily become the object of any criminal prosecution; the doctrine strikes deep; it extends to the whole penal code; there can be no trial at the Old Bailey, where the jury may not be told in the same manner, as on this occasion: "The burglary consists of law and fact; you are to try the fact of breaking and stealing; you will say if the property is proved as laid in the indictment, but whether this is a burglary belongs to the court to determine; I shall reserve it for the opinion of the judges."

One reason given by the learned judge in the present case, for not leaving the matter of libel to the consideration of the jury is, that the whole appears upon the record; I do not, with great submission, admit the justness of this reason; because it is making a circumstance purely accidental, a motive for altering the established method of trying offences; and if it is a reason, the same reason exists in an indictment for perjury; though I fancy, no judge ever made this use of it; the same reason might be introduced into indictments for all offences; for a prosecutor, instead of confining himself to the present short method of indicting for larceny, might alledge every particular movement in the process of picking a pocket; and the judge might then say, with the same propriety, as in the present instance; "The case is all upon the record, it is therefore very proper to leave it to the court to determine, whether in point of law it is within the statute of Elizabeth." But lest we should fail of making the application of the precedent, as it stood upon its own ground, singly, and by itself, the law is here laid down in a way that puts all your lordships under a like restraint; not only where the indictment contains the whole offence, but in all indictments whatsoever. The learned judge says, whatever appears upon the record is not for our decision here.

My lord, I know that the where and the whereas of pleading is not such a part of the record, as is to be decided upon at *Nisi Prius*; but, my lord, the crime appears upon the record, and the defendant says he is not guilty of it; and the jury are to try if he is; this, surely, is to be decided upon; or the judge and jury meet there for no purpose at all. But "it may be decided upon hereafter." I answer, so it might have been then, as I trust your lordships will determine, and in so determining, you will justify that maxim of the law, which says, '*frustra per plura quaeritur quod fieri possit per pauciora.*' When the law says, my client ought to have been left to the judgment of his country, why is he brought up to the bar of this court, to contest the same point, which might, in the proper course of things, have been decided in the first instance?

But the learned judge has given another reason for this. It is a reason, indeed, which

I own, would not have occurred to me, and which I beg leave, with that deference which belongs to my situation, to protest against. He says, speaking almost in the language of the counsel for the prosecution, "If I was to give an opinion here, that it was not a libel and you adopted it," that is; if you were to acquit the defendant; what then? "you deprive the subject of that which is one of his dearest birth-rights, you deprive him of his writ of error."

Your lordship has heard of private vices being public benefits; but whoever conceived that public vices were private benefits? The law of the latter position is surely as incorrect as the morality of the former; for this doctrine, pushed to its full extent, supposes that the prosecutor of a public crime has a sort of interest, or stake, in the enquiry, further than the ends of justice, and that the judge should shew a sort of tenderness for the preservation of it. Whereas it is the humane language of our law, that the judge should be counsel for the criminal, and so far has this judicial mercy been indulged, that I have seen judges blink very hard indeed, to avoid any infringement of it.

Not to be tedious; I trust I have shewn, to the satisfaction of your lordship and the court, that upon the trial of the general issue of not guilty, the jury are the proper judges both of the law and fact. That the duty of the judge upon the bench is to advise them in finding that law and fact. That if he takes the matter of law wholly from the jury, to be decided in another place, as he takes part of the matter of enquiry from the jury, the trial is incomplete, and the verdict so of course.

I will no longer delay the judgment of the court.

I sit down, assured that your lordship will grant a new trial. If I shall find myself disappointed in my expectation; and the doctrines which I have weakly endeavoured to combat, shall, this day, be pronounced to be the fixed and unalterable law of the land, I shall then most seriously lament. And, in the midst of my great concern hereafter, it will afford my mind but little consolation, to reflect, that by your lordship's great favour and indulgence, it has been permitted me, for a few minutes, to avert—the heaviest blow which, in my conscience, I shall think the liberties of the people of England have ever received.

It was too late in the day, when the Counsel finished, for the Judges to deliver their opinions, and the Court immediately adjourned; the Lord Chief Justice declaring, that 'they were agreed in the judgment they were to give, and would deliver it the next morning.'

Accordingly, next day, the 16th of November, at the opening of the Court,

The Earl of *Mansfield*, Lord Chief Justice, delivered himself as follows:

In this case of the King against Mr. Shipley, dean of St. Asaph, the motion to set aside the verdict, and to grant a new trial, upon account of the misdirection of the judge, supposes that upon this verdict (either as a general, or as minutes of a special verdict to be reduced into form), judgment may be given:—for if the verdict was defective, and omitted finding any thing within the province of the jury to find, there ought to be a *venire de novo*, and consequently this motion is totally improper; therefore, as I said, the motion supposes that judgment may be given upon the verdict; and it rests upon the objections to the direction of the judge.

I think they may be reduced to four in number, one of which is peculiar to this case, and therefore I begin with it, *viz.* *That the judge did not leave the evidence of a lawful excuse or justification to the jury, as a ground for them to acquit the defendant upon, or as a matter for their consideration.* This is an objection peculiar to this case, and therefore I begin with it, to dispose of it first. Circumstances merely of alleviation or aggravation are irrelevant upon the trial; they are totally immaterial to the verdict, because they do not prevent or conclude the jury's finding for or against the defendant: they may be made use of when judgment is given, to increase or lessen the punishment, but they are totally irrelevant and immaterial upon the trial. Circumstances which amount to a lawful excuse or a justification, are proper upon the trial, and can only be used there. Upon every such defence set up, of a lawful excuse or justification, there necessarily arise two questions, one of law, the other of fact; the first to be decided by the Court, the second by the jury.

Whether the fact alleged, supposing it true, be a legal excuse, is a question of law; whether the allegation be true, is a question of fact; and, according to this distinction, the judge ought to direct, and the jury ought to follow the direction; though by means of a general verdict they are intrusted with a power of blending law and fact, and following the prejudices of their affections or passions.

The first circumstance in evidence in this cause is a letter of the 24th of January to Edwards, and the advertisement that accompanied it; and what was said by Edward Jones in the conversation that he held with the defendant on the 7th of January. Upon this part of the case we must suppose the paper seditious or criminal; for, if it is neither seditious nor criminal, the defendant must be acquitted upon the face of the record.—Therefore, whether it is an excuse or not, we must suppose the paper to be a libel, or criminal in the eyes of the law. Then how does it stand upon this excuse? why, the defendant, knowing the paper had been strongly

objected to as tending to sedition, or that it might be so understood, publishes it with an advertisement,* avowing and justifying the doctrine: so that he publishes it under the circumstances of avowing and justifying this criminal doctrine.

The next circumstance is from the evidence of Edward Jones, that the defendant was told and knew that the paper was objected to as having a seditious tendency; that it might do mischief if it was translated into Welsh, and therefore that design was laid aside; that he read it at the county meeting, and said he read it *with a rope about his neck*; and, after he had read it, he said, *it was not so bad*. And this he knew upon the 7th January; yet he sets this up as an excuse for ordering it to be printed upon the 24th of January.

We are all of opinion clearly, that if the writing be criminal, these circumstances are aggravations, and by no means ought to have been left to the jury as any excuse.

It is a mockery to say it is an excuse. What! when the man himself knows that he reads it *with a rope about his neck*; when he says, admitting it to be bad, that it not *so bad*; when he has told a company of gentlemen, that for fear of its doing mischief to their country, he would not have it translated into Welsh:—all these circumstances plainly showed him that he should not have published it. Therefore we are all of opinion, it is the same as if no such evidence had been given, and that, if it had been offered by way of excuse, it ought not to have been received. The advertisement was read to the jury, but the judge did very right not to leave it to them as a matter of excuse, because it was clearly of a contrary tendency.

What was meant by saying the advertisement should have been set out in the indictment, I do not comprehend; much less that blasphemy may be charged on the Scripture by only stating half the sentence.

If any part of the sentence qualifies what is set forth, it may be given in evidence, as was expressly determined by the Court so long ago as the case of the King and Bere, in *Salkeld* 417, in the reign of king William. Every circumstance which tends to prove the meaning, is every day given in evidence, and the jury are the only judges of the meaning, and must find the meaning; for if they do not find the meaning, the verdict is not complete. So far for the objection upon that part which is peculiar to this case.

The second objection is, that the judge did not give his own opinion, whether the writing was a libel, or seditious, or criminal.

The third, that the judge told the jury they ought to leave that question upon record to the Court, if they had no doubt of the meaning and publication.

* See the advertisement prefixed to the Dialogue, p. 892.

The fourth and last, that he did not leave the defendant's intent to the jury.

The answer to these three objections is, that by the constitution the jury ought not to decide the question of law, whether such a writing, of such a meaning, published without a lawful excuse, be criminal; and they cannot decide it *finally* against the defendant, because, after the verdict, it remains open upon the record; therefore it is the duty of the judge to advise the jury to separate the question of fact from the question of law; and, as they ought not to decide the law; and the question remains entire upon the record, the judge is not called upon necessarily to tell them his own opinion.* It is almost peculiar to the form of the prosecution for a libel, that the question of law remains entirely for the Court *upon record*, and that the jury cannot decide it against the defendant; so that a general verdict 'that the defendant is guilty,' is equivalent to a special verdict in other cases. It finds all which belongs to the jury to find; it finds nothing as to the question of law. Therefore when a jury have been satisfied as to every fact within their province to find, they have been advised to find the defendant *guilty*, and in that shape they take the opinion of the Court upon the law. No case has been cited of a special verdict in a prosecution for a libel, leaving the question of law upon the record to the Court, though, to be sure, it might be left in that form; but the other is simpler and better.

As to the last objection upon the *intent*: a criminal intent, from doing a thing criminal in itself without a lawful excuse, is an inference of law, and a conclusive inference of law, not to be contradicted but by an excuse, which I have fully gone through. Where an *innocent act* is made criminal, when done with a particular intent, there the intent is a *material fact* to constitute the crime. This is the answer that is given to these three last objections to the direction of the judge. The first I said was peculiar to this case.

The subject matter of these three objections has arisen upon every trial for a libel since the Revolution, which is now near one hundred years ago. In every reign there have been many such trials both of a private and a public nature. In every reign there have been several defended with all the acrimony of party animosity, and a spirit ready to contest every point, and to admit nothing. During all this time, as far as it can be traced, one may venture to say, that the direction of every judge has been consonant to the doctrine of Mr. Justice Buller; and no counsel has complained of it by any application to the Court. The counsel for the crown, to remove the prejudices of a jury, and to satisfy

the by-standers, have expatiated upon the enormity of the libels; judges, with the same view, have sometimes done the same thing; both have done it wisely with another view—to obviate the captivating harangues of the defendant's counsel to the jury, tending to show that they can or ought to find that in law the paper is no libel.

But the formal direction of every judge (under which every lawyer for near 100 years, has so far acquiesced as not to complain of it to the court) seems to me, ever since the Revolution, to have been agreeable to the direction of Mr. Justice Buller. It is difficult to cite cases; the trials are not printed. Unless particular questions arise, notes are not taken: nobody takes a note of a direction of course not disputed. We must, as in all cases of tradition, trace backwards, and presume, from the usage which is remembered, that the precedent usage was the same. We know there were many trials for libels in the reign of king William; there is no trace that I know of, of any report, that at all bears upon the question during that reign, but the case of the King and Bere, which is in Salkeld; that was in the reign of king William, and the only thing there applicable to the present question is, that the Court were of opinion that the writing complained of must be set out *according to the tenour*: Why? That the Court may judge of the very words themselves; whereas, if it was to be *according to the effect*, that judgment must be left to the jury. But there it was determined, and under that authority ever since, the writing complained of is set out according to the tenour.

During the reign of queen Anne we know several trials were had for libels, but the only one cited is in the year 1704;† and there the direction (though lord Holt, who is said to have done it in several cases, goes into the enormity of the libel) to the jury was, 'If you find the *publication* in London, you must find the defendant guilty.' Thus it stands, as to all that can be found precisely and particularly, in the reigns of king William and queen Anne. We know that in the reign of George 1 there were several trials for libels, but I have seen no note or traces of them, nor any question concerning them. In the reign of king George 2 there were others; but the first of which there is a note (for which I am obliged to Mr. Manley‡), was in February 1729—the King and Clarke§—which was tried before L. C. J. Raymond; and there he lays it down expressly (there being no question about an excuse, or about the meaning), he lays it down, *the fact of printing and publishing only is in issue*.

The *Craftsman* was a celebrated party-paper, written in opposition to the ministry of sir

* He is now bound by the Libel Act to tell them his own opinion. Note to 'Lord Erskine's Speeches.' See the Libel Act [stat. 32 G. 3, c. 60] ante, Vol. 8, p. 36.

* Tutchin's Case, Vol. 14, p. 1095.

† One of the counsel for the prosecution in this cause.

‡ See it in Vol. 17, p. 667, of this Collection.

Robert Walpole, by many men of high rank and great talents: the whole party espoused it. It was thought proper to prosecute the famous Hague letter. I was present at the trial, it was in the year 1731. It happens to be printed in the State Trials.* There was a great concourse of people; it was a matter of great expectation, and many persons of high rank were present to countenance the defendant. Mr. Fazakerly and Mr. Bootle (afterwards sir Thomas Bootle) were the leading counsel for the defendant. They started every objection and laboured every point. When the judge over-ruled them, he usually said, "If I am wrong, you know where to apply." The judge was my lord Raymond, C. J. who had been eminent at the bar in the reign of queen Anne, had been Solicitor and Attorney General in the reign of George 1, and was intimately connected with sir Edward Northey, so that he must have known what the ancient practice had been. The case itself was of great expectation, as I have stated to you, and it was so blended with party passion, that it required his utmost attention; yet, when he came to sum up and direct the jury, he does it, as of course, just in the same manner as Mr. Justice Buller did, "that there were three points for consideration: the fact of publication; the meaning (those two for the jury); the question of law or criminality, for the court upon the record." Mr. Fazakerly and Mr. Bootle were, as we all know, able lawyers; they were connected in party with the writers of the *Craftsman*.—They never thought of complaining to the court of a misdirection; they would not say it was not law: they never did complain.—It never was complained of, nor did any idea enter their heads, that it was not agreeable to law. Except that case in 1729 that is mentioned, and this, the trials for libels before my lord Raymond are not printed, nor to be found in any notes. But, to be sure, his direction in all was to the same effect. I by accident (from memory only I speak now) recollect one where the *Craftsman* was acquitted; and I recollect it from a famous, witty, and ingenious ballad that was made at the time by Mr. Pulteney; and though it is a ballad, I will cite the stanza I remember from it, because it will show you the idea of the able men in opposition, and the leaders of the popular party in those days. They had not an idea of assuming that the jury had a right to determine upon a question of law, but they put it upon another and much better ground. The stanza I allude to is this:

For Sir Philip well knows,
That his innuendos
Will serve him no longer
In verse or in prose;
For twelve honest men have decided the cause,
Who are judges of fact, though not judges of laws.

* See it, Vol. 17, p. 625.

† Sir Philip Yorke, afterwards Lord Chancellor Hardwicke, then Attorney General.

It was the admission of the whole of that party: they put it right; they put it upon the meaning of the innuendos: upon that the jury acquitted the defendant; and they never put up a pretence of any other power, except when talking to the jury themselves.

There are no notes that I know of (and I think the bar would have found them out upon this occasion, if there had been any that were material), there are no notes of the trials for libels before my lord Hardwicke. I am sure there are none before Lord C. J. Lee till the year 1752, when the case of the King and Owen came on before him. This happens to be printed in the State Trials, though it is incorrect, but sufficient for the present purpose. I attended that trial as Solicitor-general. Lord Chief Justice Lee was the most scrupulous observer and follower of precedents, and he directed the jury, *as of course*, in the same way Mr. Justice Buller has done.

When I was Attorney-General, I prosecuted some libels; one I remember from the condition and circumstances of the defendant; he was found guilty. He was a common councilman of the city of London: and I remember another circumstance, it was the first conviction in the city of London that had been for 27 years. It was the case of the King and Nutt; and there he was convicted, under the very same direction, before lord chief justice Ryder.

In the year 1756 I came into the office I now hold. Upon the first prosecution for a libel which stood in my paper, I think (but I am not sure), but I think it was the case of the King and Shebbeare, I made up my mind as to the direction I ought to give. I have uniformly given the same in all, almost in the same form of words. No counsel ever complained of it to the court. Upon every defendant being brought up for judgment, I have always stated the direction I gave; and the court has always assented to it. The defence of a *lawful excuse* never existed in any case before me; therefore I have told the jury if they were satisfied with the evidence of the publication, and that the meanings of the innuendos were as stated, they ought to find the defendant guilty; that the question of law was upon record for the judgment of the court. This direction being *as of course*, and no question ever raised concerning it in court (though I have had the misfortune to try many libels in very warm times, against defendants most obstinately and factiously defended), yet the direction being *as of course*,

It appears by a pamphlet printed in 1754, that lord Mansfield is mistaken. The verse runs thus:

Sir Philip well knows,
That his innuendos
Will serve him no longer in verse or in prose;
For twelve honest men have determin'd the cause,
Who are judges alike of the facts, and the laws.

Note to 'Speeches of Hon. Thomas Erskine.'
See vol. 17, p. 672.

and no objection made, it passed as of course, and there are no notes of what passed. In one case of the King and Woodfall, on account of a very different kind of question (but, upon account of another question), there happens to be a report, and there the direction I have stated, is adopted by the whole court as right, and the doctrine of Mr. Justice Buller is laid down in express terms. Such a judicial practice in the precise point from the Revolution, as I think, down to the present day, is not to be shaken by arguments of general theory, or popular declamation. Every species of criminal prosecution has something peculiar in the mode of procedure; therefore general propositions, applied to all, tend only to complicate and embarrass the question. No deduction or conclusion can be drawn from what a jury *may* do, from the *form* of procedure, to what they *ought* to do upon the fundamental principles of the constitution and the reason of the thing, if they will act with integrity and good conscience.

The fundamental definition of trial by jury depends upon a universal maxim that is without an exception. Though a definition or maxim in law, without an exception, it is said, is hardly to be found, yet this I take to be a maxim without an exception: *Ad questionem juris non respondent juratores; ad questionem facti non respondent iudices*.

Where a question can be severed by the form of pleading, the distinction is preserved upon the face of the record, and the jury cannot encroach upon the jurisdiction of the Court; where, by the form of pleading, the two questions are blended together, and cannot be separated upon the face of the record, the distinction is preserved by the honesty of the jury. The constitution trusts, that, under the direction of a judge, they will not usurp a jurisdiction which is not in their province. They do not know, and are not presumed to know the law; they are not sworn to decide the law; they are not required to decide the law.—If it appears upon the record, they ought to leave it there, or they may find the facts subject to the opinion of the Court upon the law. But further, upon the reason of the thing, and the eternal principles of justice, the jury ought not to assume the jurisdiction of the law. As I said before, they do not know, and are not presumed to know any thing of the matter; they do not understand the language in which it is conceived, or the meaning of the terms. They have no rule to go by but their affections and wishes. It is said, if a man gives a *right* sentence upon hearing one side only, he is a wicked judge, because he is right by chance only, and has neglected taking the proper method to be informed; so the jury who usurp the judicature of law, though they happen to be right, are themselves wrong, because they are right by chance only, and have not taken the constitutional way of deciding the question. It is the duty of the judge, in all cases of general justice, to tell

the jury how to do right, though they have it in their power to do wrong, which is a matter entirely between God and their own consciences.

To be free, is to live under a government by law. The *liberty of the press* consists in printing without any previous license, subject to the consequences of law. The *licentiousness* of the press is *Pandora's box*, the source of every evil. Miserable is the condition of individuals, dangerous is the condition of the state, if there is no certain law, or, which is the same thing, no certain administration of law to protect individuals, or to guard the state.

Jealousy of leaving the law to the Court, as in other cases, so in the case of libels, is now, in the present state of things, puerile rant and declamation. The judges are totally independent of the ministers that may happen to be, and of the king himself. Their temptation is rather to the popularity of the day. But I agree with the observation cited by Mr. Cowper* from Mr. J. Foster, 'that a popular judge is an odious and a pernicious character.†

The judgment of the Court is not final; in the last resort it may be reviewed in the House of Lords, where the opinion of all the judges is taken.

In opposition to this, what is contended for? That the law shall be in every particular cause what any twelve men, who shall happen to be the jury, shall be inclined to think, liable to no review, and subject to no control, under all the prejudices of the popular cry of the day, and under all the bias of interest in this town, where thousands, more or less, are concerned in the publication of newspapers, paragraphs, and pamphlets. Under such an administration of law, no man could tell, no counsel could advise, whether a paper was or was not punishable.

I am glad that I am not bound to subscribe to such an absurdity, such a solecism in politics.—Agreeable to the *uniform* judicial practice since the Revolution, warranted by the fundamental principles of the constitution, of the trial by jury, and upon the reason and fitness of the thing, we are all of opinion that this motion should be rejected, and this rule discharged.‡

Note. Although the Court was unanimous in discharging the rule, Mr. Justice Willes, in delivering his opinion, sanctioned by his authority Mr. Erskine's argument, that upon a plea of Not guilty, or upon the general issue on an indictment or information for a libel, the jury had not only the *power*, but a constitutional *right*, to examine, if they thought fit, the criminality or innocence of the paper charged as a libel; declaring it to be his set-

* One of the counsel for the prosecution.

† See vol. 19, p. 1112.

‡ In a Note to the King against Withers, 3 Term Rep. 428, is a less full report of this Judgment.

tled opinion, that, notwithstanding the production of sufficient proof of the publication, the jury might upon such examination acquit the defendant generally, though in opposition to the directions of the judge, without rendering themselves liable either to attain, fine, or imprisonment, and that such verdict of deliverance could in no way be set aside by the Court.*

Afterwards, on the part of the Defendant, was made a motion in arrest of Judgment. The following account of Mr. ERSKINE'S Argument in support of that motion is copied into the 'Speeches of the Hon. Thomas Erskine' from a newspaper published on the day after the argument was delivered:

Mr. *Erskine* moved the Court to arrest the judgment in the case of the King against the Dean of St. Asaph upon two grounds: first, because even if the indictment sufficiently charged a libel, the verdict given by the jury was not sufficient to warrant the judgment of the Court; and secondly, because the indictment did not contain any legal charge of a libel.

On the first objection, he again insisted on the right of the jury to find a general verdict on the merit of the writing charged on the record as a libel, notwithstanding the late judgment of the Court;—and declared he should maintain it there, and every where else, as long as he lived, till the contrary should be settled by act of parliament. He then argued at considerable length, that the verdict, as given by the jury, was neither a general, nor a special verdict, and complained of the alteration made upon the record without the authority of the Court.

He said, that the only reason for his insisting on his first objection at such length, was the importance of the principle which it involved, and the danger of the precedent it established; although he was so certain of prevailing upon his second objection, that he considered it to be almost injustice to the Court to argue it. All who knew him in and out of the profession, could witness for him, that he had ever treated the idea of ultimately prevailing against him, upon such an indictment, to be perfectly ridiculous, and that his only object in all the trouble which he had given to the Court and to himself, in discussing the expediency of a new trial, was, to resist a precedent, which he originally thought and still continued to think was illegal and unjustifiable:—the warfare was safe for his

client, because he knew he could put an end to the prosecution any hour he pleased, by the objection he would now at last submit to the Court. It did not require the eye of a lawyer to see that, even if the Dialogue, instead of being innocent and meritorious, as he thought it, had been the foulest libel ever composed or published, the indictment was drawn in such a manner as to render judgment absolutely impossible. He said, that if he had been answering in his own person to the charge of publishing the Dialogue complained of, he should have rejected with scorn the protection of a deficient indictment, would have boldly met the general question, and holding out defiance to the prosecutor, would have called upon his counsel to show what sentence, or word, though wrested with all the force ingenuity can apply to confound grammar and distort language, could be tortured into a violation of any one principle of the government:—but that, standing as counsel for another, he should not rest his defence even upon that strong foundation, but, after having maintained as he had done at the trial, the innocence, or rather the merit of the Dialogue, should entrench himself behind every objection which the forms of law enabled him to cast up.

The second objection was, that the indictment did not contain a sufficient charge of a libel of and concerning the king and his government:—that though the Court, by judging of libels of that nature, invested itself with a very large discretion; yet it, nevertheless, was a discretion capable of being measured by very intelligible rules of law, and within which rules he was persuaded the Court would strictly confine itself.

The first was, that the Court, in judging of the libellous or seditious nature of the paper in question, could only collect it from the indictment itself, and could supply nothing from any extrinsic source; and that, therefore, whatever circumstances were necessary to constitute the crime imputed, could not be supplied from any report of the evidence nor from any inference from the verdict, but must be set out upon the record.

That rule was founded in great wisdom, and formed the boundary between the provinces of the Jury and the Court; because, if any extrinsic circumstances, independent of the plain and ordinary meaning of the writing, were necessary to explain it, and point its criminal application; those facts must be put upon the record, for three reasons:

First, that the charge might contain such a description of the crime, that the defendant might know what crime he was called upon to answer.

Secondly, that the application of the writing to those circumstances which constituted its criminality might be submitted as facts to the jury, who were the sole judges of any meaning, which depended upon extrinsic proof.

3 X

* This Judgment may be considered as most fortunate for the public, since, in consequence of the very general interest taken in this cause, the public mind was at last fully ripe for the Libel Bill; which was soon after moved in the House of Commons by Mr. Fox, and seconded by Mr. Erskine. [See vol. 8, p. 36.]

Thirdly, that the Court might see such a definite crime, that they might apply the punishment which the law inflicted.

He admitted, that wherever a writing was expressed in such clear and unambiguous words as in itself to constitute a libel, without the help of any explanation, all averments and innuendos were unnecessary;—and therefore, if it could be established that the pamphlet in question, if taken off the dusty shelves of a library, and looked at in the pure abstract, without attention to times or circumstances, without application to any facts not upon record, and without any light cast upon it from without, contained false, pernicious, illegal, and unconstitutional doctrines, in their tendency destructive of the government, it would unquestionably be a libel. But if the terms of the writing were general, and the criminality imputed to it consisted in criminal allusions or references to matter *dehors* the writing; then, although every man who reads such a writing might put the same construction on it; yet when it was the charge of a crime, and the party was liable to be punished for it, there wanted something more; it ought to receive a juridical sense on the record, and, as the facts were to be decided by the jury, *they* only could decide whether the application of general expressions, or terms of reference, or allusions, as the case might be, to matters extrinsic, was just; nor could the general expressions themselves be extended, even by the jury, beyond their ordinary meaning, without an averment to give them cognizance of such extended import;—nor could the Court, even after a verdict of guilty, without such averment infer any thing from the finding, but must pronounce strictly according to the just and grammatical sense of the language on the record. The Court, by declaring libel or not libel, to be a question of law, must be supposed by that declaration not to assume any jurisdiction over facts, which was the province of the jury; but, only to determine that, if the words of the writing without averment, or with averments found to be true by the jury, contained criminal matter, it would be pronounced to be a libel according to the rules of law:—whereas, if the libel could only be inferred from its application to something extrinsic, however reasonable or probable such application might be,—no Court could possibly make it for want of the averment, without which the jury could have no jurisdiction over the facts extrinsic, by reference to which only the writing became criminal.

The next question was, how the application of the writing to any particular object was to be made upon the record: that was likewise settled in the case of the King and Horne.*

* In all cases those facts which are descriptive of the charge must be introduced on the

record by averments, in opposition to argument and inference.

He said, that where facts were necessary in order to apply the matter of the libel to them, it was done introductorily, and where no new fact was necessary, but only ambiguous words were to be explained, it was done by the innuendo; but that the innuendo could not in itself enlarge the matter which it was employed to explain, without an antecedent introduction to refer to; but coupled with such introductory matter it could.

He said, nothing remained but to apply those unquestionable principles to the present indictment, and that application divided itself into two heads:

First, whether the words of the Dialogue, considered purely in the abstract, without being taken to be a seditious exhortation addressed to the people, in consequence of the present state of the nation, as connected with the subject matter of it, could possibly be considered to be a libel on the king and his government.

Secondly, whether, if such reference or allusion was necessary to render it criminal, there were sufficient averments on the record to enable the Court to make the criminal application of otherwise innocent doctrines consistently with the rules of law.

He said, he should therefore take the Dialogue, and show the Court that the whole scope and every particular part of it were meritorious.

Here lord Mansfield said to Mr. Erskine, that having laid down his principles of judgment, the counsel for the prosecution should point out the parts they insisted on as sufficiently charged to be libellous, and that he would be heard in reply. On which Mr. Bearcroft, Mr. Cowper, Mr. Leycester, and Mr. Bower, were all heard; and endeavoured with great ingenuity to show that the Dialogue was on the face of it a libel: but on Mr. Erskine's rising to reply, the Court said, they would not give him any further trouble, as they were unanimously of opinion, that the indictment was defective, and that the judgment should be arrested.

The Court went upon the principles of the case of the King against Horne, cited by Mr. Erskine; saying there were no averments to point the application of the paper as a libel on the king and his government; and the dean was therefore finally discharged from the prosecution.

Mr. Justice Willes threw out, that if the indictment had been properly drawn, it might have been supported; but lord Mansfield and Mr. Justice Buller did not give any such opinion, confining themselves strictly to the question before the Court.

The judgment was accordingly arrested, and no new proceedings were ever had upon

* See lord chief justice De Grey's Argument in Rom. Proc. in this Case, vol. 20, p. 791.

the subject against the dean or the printer employed by him. His adversaries were, it is believed, sufficiently disposed to distress him; but they were probably aware of the consequences of bringing the doctrines maintained by the court of King's-bench into a second public examination.*

In the New Annual Register (Principal Occurrences, p. 97) for the year 1784, is given under date December 4th, an account of bonfires, illuminations, and other testimonies of attachment and gratulation, with which, in honour of the dean's concern in this case, his arrival at the house of his venerable father at

* Note to lord Erskine's Speeches.

Twyford, near Winchester, was celebrated by the inhabitants of the neighbourhood.

ADDENDUM

To the Note in page 857.

Together with the office of Chief Justice of Chester, Mr. Kenyon held that of the King's Attorney General. There would have been something unseemly in that officer's presiding at the trial of an indictment for the publication of a seditious libel. With respect to the King's Attorney General's holding the office of Chief Justice of Chester, see sir Samuel Romilly's observations in the House of Commons, March 1, 1814. New Parl. Deb. vol. 27, p. 330.

567. Proceedings against GEORGE STRATTON, HENRY BROOKE, CHARLES FLOYER, and GEORGE MACKAY, esqrs. on an Information filed against them, by his Majesty's Attorney General, for a Misdemeanor, in arresting, imprisoning, and deposing George Lord Pigot, Commander in Chief of the Forces in Fort St. George, and President and Governor of the Settlement of Madras, in the East-Indies: 19 & 20 GEORGE III. A. D. 1779, 1780.

The Report given below of the Trial of Messrs. Stratton, Brooke, Flöyer, and Mackay, in the court of King's-bench, was taken in short-hand by Mr. Blanchard, but was never printed. For the communication of Mr. Blanchard's MS. Notes, I am indebted to Mr. Henry Smith, now (April 1814) Solicitor to the East-India Company, whose father was engaged on behalf of the prosecution.

IT appears from the Journal of the House of Commons, that on April 16th, 1779, in a Committee of the whole House, to which the consideration of certain papers relating to the affairs of the East-India Company had been referred, it was resolved,

"That it appears to this Committee, that George lord Pigot, a member of this House, was, on the 24th of August, 1776, arrested by a military force, and carried and confined under a military force at the house of major Horne, at a place called the Mount, about nine miles distant from the town of Madras and Fort St. George, of which he was governor and commander in chief; and that the said George lord Pigot continued in confinement under a military force for upwards of eight months, that is, from the 24th day of August,

1776, until the 11th day of May following, when he died.

"That it appears to this Committee, that Geo. Stratton, Henry Brooke, Charles Floyer, Archdale Palmer, Francis Jourdan, and Geo. Mackay, esqrs. did, on the 23d day of August 1776, form themselves into a council, and did confer the command of the army and the garrison of Fort St. George on colonel James Stuart, ordering him to arrest the person of George lord Pigot, their governor and commander in chief, and to put the fort, garrison, and fort-house, under their command.

"That it appears to this Committee, that the Court of Directors of the East-India Company have, by letters of the 4th of July, 1777, and of the 23d of December, 1778, to their presidency at Madras, ordered, that courts-martial should be held for the trial of colonel James Stuart, colonel Edingtoun, major Horne, and captain Lysaught, for having arrested and confined, under a military force, their governor and commander in chief, George lord Pigot.

"That it is the opinion of this Committee, that an humble Address be presented to his Majesty, praying his Majesty that he would be graciously pleased to give directions to his Attorney General, to prosecute George Stratton, Henry Brooke, Charles Floyer, and George Mackay, esqrs. for ordering their go-

vernor and commander in chief George lord Pigot, to be arrested and confined under a military force; they being returned to England, and now within the jurisdiction of his Majesty's courts of Westminster-hall.*

The above resolutions were on the same day reported to the House and agreed to. The House thereupon ordered, "That the said Address be presented to his majesty by such members of this House as are of his majesty's most honourable privy council:" and, on April 19th, "The lord Hinchinbrook reported to the House that their Address of Friday last (praying his majesty, that he would be graciously pleased to give directions to his Attorney General, to prosecute George Stratton, Henry Brooke, Charles Floyer, and George Mackay, esqrs. for ordering their governor and commander in chief George lord Pigot, to be arrested and confined under a military force; they being returned to England, and now within the jurisdiction of his majesty's courts of Westminster-hall) had been presented to his majesty; and that his majesty had commanded him to acquaint this House, that he will give directions as required by the said Address."

Accordingly, in the ensuing Trinity Term, Mr. Attorney General (Wedderburn) filed an information against Messrs. Stratton, Brooke, Floyer, and Mackay, and in the succeeding Michaelmas Term, on an application to quash the said information, the following proceedings took place:

The KING against STRATTON and others.

November 11, 1779.

An information had been filed *ex officio*, by the Attorney General, in consequence of a resolution of the House of Commons, against the defendants, for imprisoning the governor (lord Pigot) and subverting the government of the settlement at Madras, where they were members of the council. The defendants had pleaded, and the parties were at issue, and notice of trial given for the sittings after last term; but the prosecutor countermanded the notice, and, on Tuesday the 9th of November, the Solicitor General applied for a rule to shew cause, why the information should not be quashed, suggesting, as the ground of the application, that another was ready to be filed, which stated the offence more particularly, and was better adapted to the nature of the charge. The rule was granted, and cause was, this day, shewn by Dunning, Wilson, Arden, and Erskine.

They said, there never had been an application of this sort, but that in the case of *Rex v. Philip Carteret Webb* [E. 4 Geo. 3. 3 Burr.

* These resolutions, together with the speeches of admiral Pigot, brother to lord Pigot, who proposed them, and of Mr. Stratton and the other gentlemen who took part in the debate, are inserted in the New Parl. Hist. vol. 20, pp. 363 et seq.

1468. Since reported in 1 Blackstone, 460.] where the prosecution was by indictment, on a motion to quash the first, another having been found, the Court would not permit it, but upon terms, and by consent; and said, that it was by no means a motion of course. That in all cases where indictments have been quashed on the motion of the prosecutor, it has been on the ground of *insufficiency*, [Vide sir Wm. Withipole's case, H. 4 Car. 1. Cro. Car. 147. *Rex v. Swan and Jefferys*, Fost. 104] which was not pretended in the present instance. That in the case of *Rex v. Purnell*, [1 Wilson, 239. Since reported in 1 Blackst. 37] which was an information filed *ex officio* by sir Dudley Ryder, then Attorney General, against the defendant as vice-chancellor, and a justice of peace in the university of Oxford, the Attorney General had put an end to the first information, without any application to the Court, by a *noli prosequi*, but that he had done this on the express order of the king, which order was stated in his warrant to the master of the crown-office [sir James Burrow] to enter the *noli prosequi*. That, at all events, the Court would not grant the motion without obliging the prosecutor to pay costs [H. 6 Geo. 2. *Rex v. Moore*, 2 Str. 946.]

The *Solicitor General*, in support of the rule, observed, that the defendant could not suffer any injury by the quashing of the information, because the crown might go on to trial, and judgment, on the new one, notwithstanding the pendency of the other, for that, on indictments, or informations for crimes, the pendency of another prosecution for the same offence cannot be pleaded, as it may to informations for penalties.* [Sir William Withipole's case, *Rex v. Swan and Jefferys*.] He said, that leave to quash indictments is often granted in the first instance, without a rule to shew cause.

Lord *Mansfield* having asked the *Solicitor General* if there was any authority or precedent for quashing an information *ex officio* upon the application of the prosecutor, he admitted that he knew of none, and his lordship said, that if it was proper to stop the information, he did not see why the Attorney General might not do it by entering a *noli prosequi*, without the interference of the Court.

Buller, Justice.—What the *Solicitor General* has stated, viz. that the pendency of the first information would be no plea to the second, is decisive against this motion. It is certainly not of course to quash indictments. All the litigated cases are upon *insufficiency*,

* Hawkins, B. 2, c. 26, § 63. says that another information depending may be pleaded an abatement to an information *qui tam*, and cites Cro. El. 261. 1 Roll. Rep. 49, 50, 134. But he says nothing on that point as to other informations. In B. 2, c. 34, § 1, he says, generally, that another prosecution depending is no good plea to an indictment, as it is to an appeal or information, but he refers to the former passage, and therefore probably meant only *qui tam* informations.

and if the Court has even permitted it in the first instance, it has been because they gave credit to the counsel in stating the insufficiency.—The rule discharged.”

Douglas's Reports, p. 227.

In consequence of this decision, the Attorney General entered a *nolle prosequi* on the original information, and in the same term filed the following :

Of Michaelmas Term, in the 20th year of the reign of King George the 3d.

Middlesex, to wit. Be it remembered, that Alexander Wedderburn, esq. Attorney General of our present sovereign lord the king, who for our said lord the king in this behalf prosecuteth, in his proper person cometh here into the court of our said lord the king, before the king himself at Westminster on Monday next after the octave of St. Martin in this same term, and for our said lord the king giveth the Court here to understand and be informed, that the United Company of Merchants of England trading to the East-Indies, on the 4th day of April, in the 15th year of the reign of our sovereign lord George the third, now king of Great Britain, &c. and long before, were and from thence hitherto have been and still are possessed of the fort and garrison of Fort St. George, and the city or town of Madras Patnam, in the East Indies, which during all the said time have been and still are one of the said Company's principal settlements in India, and of other settlements and factories on the coasts of Coromandel and Orixá. And the said Attorney General of our said lord the king for our said lord the king, further giveth the Court here to understand and be informed, that heretofore, to wit, on the said 4th day of April, in the 15th year aforesaid, at Westminster, in the said county of Middlesex, the said United Company of Merchants of England trading to the East-Indies, reposing especial trust and confidence in sir George Pigot, bart. commonly called George lord Pigot, baron Pigot of Patshul in the kingdom of Ireland, did, by their deed in writing, sealed with their common seal, constitute and appoint him the said George lord Pigot (the said George lord Pigot then being a subject of our said lord the present king) to be their governor and commander in chief of their said fort and garrison of Fort St. George and town of Madras Patnam, and of all the forces which then were or thereafter should be employed for the service of the said United Company, within the said fort, garrison and town; and he was, to the utmost of his skill and power, to do and perform all such offices and services as appertained to the post of governor and commander in chief as aforesaid, and to continue in the exercise of the same during the pleasure of the said United Company, subject nevertheless to all such rules, orders and instructions, as had theretofore been given to the president and council of Fort St. George

aforesaid, and were then in force, and also to such others as he should at any time thereafter receive in writing from the Court of Directors of the said United Company, or under the hands of thirteen or more of them, or from the governor and council of Fort St. George aforesaid; and the said United Company of Merchants of England trading to the East-Indies, did thereby strictly require, charge, and command, all commission officers, non-commission officers, soldiers, and others belonging to their military forces, and all the people and inhabitants employed or residing in their aforesaid fort, garrison, and town, to yield him the said George lord Pigot as governor and commander in chief as aforesaid, due obedience: which deed afterwards, to wit, on the same day and year aforesaid, was delivered to and accepted by the said George lord Pigot, to wit, at Westminster aforesaid, in the said county of Middlesex. And the said Attorney General of our said lord the king, for our said lord the king, further giveth the Court here to understand and be informed, that afterwards, to wit, on the 11th day of April, in the 15th year aforesaid, at Westminster aforesaid, in the said county of Middlesex, the said United Company, by their certain other deed, in writing, sealed with their common seal, did make, constitute, and ordain the said George lord Pigot, upon and from, and immediately after his arrival at Fort St. George aforesaid, and publication of that commission, to be president and governor of and for all their affairs in the coasts of Coromandel and Orixá, and of the Ginge and Maratta countries, and of all the territories thereunto belonging, and of all and singular the forts, factories, and settlements, territories, countries and jurisdictions thereof, and to execute all and every the powers and authorities thereunto appertaining, by order and direction of the Court of Directors of the said United Company for the time being, and to continue in the exercise of the same during the pleasure of the said United Company, and of the Court of Directors of the said United Company, and until the contrary thereof should be signified under the seal of the said United Company of Merchants of England trading to the East-Indies, or under the hands of thirteen or more of the Court of Directors of the said Company for the time being; and to the end that the said George lord Pigot might be better enabled to order and manage all the affairs of them the said Company, they did by the said deed constitute and ordain George Stratton, esq. to be second of their council of Fort St. George, to wit, to be next in council after their said president George lord Pigot; brigadier general Joseph Smith to be third of their said council, and not to rise to a superior rank therein; George Dawson to be fourth, Henry Brooke to be fifth, John Whitehill to be sixth, Claude Russell to be seventh, Charles Smith to be eighth, Alexander Dalrymple to be ninth, Samuel John-

son to be tenth, Charles Floyer to be eleventh, John Maxwell Stone to be twelfth, Archdale Palmer to be thirteenth, James Kay to be fourteenth, Edward Stracey to be fifteenth, Edward Cotsford to be sixteenth, Richard Lathom to be seventeenth, Francis Jourdan to be eighteenth, and George Mackay to be nineteenth and last of their said council of Fort St. George, who was not at any time to rise to an higher rank therein, for governing and managing all the said Company's affairs upon the coasts of Coromandel and Orixa, and the Ginge and Maratta countries, and governing the said Fort St. George and city of Madras Patnam, and all other forts, factories, and settlements of the said United Company, within any of the said territories; and the said United Company did thereby give and grant unto their said president and governor, George lord Pigot, and to their council aforesaid, or the major part of them (the whole council, except such who were absent as chiefs of subordinate factories being duly summoned) full power and authority from time to time to rule and govern all and every their factors and servants under their said presidency, and all the soldiers and inhabitants of their said Fort of St. George and city of Madras Patnam, and elsewhere, within the places aforesaid, to administer lawful oaths as occasion should require, and to do and perform all such other acts and things, and to use and exercise all such other powers and authorities as the said president and governor and his council, in their several and respective places where the said United Company had or should have factors, or any places of trade, were authorized to do; subject nevertheless to the superintending and controlling power of the governor general and council of Fort William in Bengal, in such cases wherein they were authorized to have a superintending and controlling power, in and by an act of parliament passed in the 13th year of his then majesty's reign, intituled, "An Act for establishing certain Regulations for the better Management of the Affairs of the East-India Company, as well in India as in Europe;" and also subject and according to such instructions and directions as he the said George lord Pigot their president and governor and council aforesaid, should from time to time receive, under the hands of thirteen or more of the Court of Directors of the said United Company for the time being, and they the said United Company did thereby order and require all their factors, servants, officers and soldiers, within the limits of the said presidency, and all the people and inhabitants of the said Fort of St. George and city of Madras Patnam, or any other their forts, places or colonies within the said presidency, to conform, submit, and yield due obedience unto the said George lord Pigot, their president and governor, and his council accordingly; and they did thereby revoke, repeal, annul and make void, every former commis-

sion or commissions given and granted by them, whereby any other person or persons was and were constituted and ordained president and governor, and any other persons therein named were constituted and ordained to be of the council at Fort St. George aforesaid: which said last mentioned deed afterwards, to wit, on the day and year last aforesaid, at Westminster aforesaid, in the said county of Middlesex, was delivered to and accepted by the said George lord Pigot. And the said Attorney General of our said lord the king, for our said lord the king, further giveth the Court here to understand and be informed, that afterwards, to wit, on the 11th day of December, in the 16th year of the reign of our said present lord the king, the said George lord Pigot did arrive at Fort St. George aforesaid; and afterwards, to wit, on the day and year last aforesaid, publication of the said last-mentioned deed was there made, and the said George lord Pigot did then and there take upon himself the office of governor and commander in chief of the said fort and garrison of Fort St. George and city or town of Madras Patnam aforesaid, and of all the forces which then were or thereafter should be employed for the service of the said United Company within the same; and also the office of president and governor of and for all the affairs of the said United Company on the coast of Coromandel and Orixa, and of the Ginge and Maratta countries, and of all the territories thereto belonging, and of all and singular the forts, factories and settlements, territories and jurisdictions thereof; and that the said George Stratton, Henry Brooke, Charles Floyer, and George Mackay, afterwards, to wit, on the same day and year last aforesaid, at Fort St. George aforesaid, to wit, at Westminster aforesaid, in the said county of Middlesex, did respectively accept, and each of them take upon himself the office of one of the council of Fort St. George aforesaid, for governing and managing all the said Company's affairs upon the coasts of Coromandel and Orixa, and the Ginge and Maratta countries, and governing the said Fort St. George, and the city or town of Madras Patnam, and all other their forts, factories, and settlements, within any of the said territories. And the said Attorney General of our said lord the king, for our said lord the king, further giveth the Court here to understand and be informed, that after the making the said last-mentioned deed, to wit, on the 12th day of April, in the said 15th year of the reign of our said present lord the king, at Westminster aforesaid, in the said county of Middlesex, Edward Wheeler, John Harrison, John Woodhouse, Joseph Sparkes, Frederick Pigou, William James, Henry Savage, Thomas Bates Rous, Henry Fletcher, Daniel Wier, Richard Hall, Samuel Peach, William George Freeman, Peter Lascelles, Charles Boddam, James Moffatt, and John Smith, being then and there more than thirteen of the Court of Di-

rectors of the said United Company of Merchants of England trading to the said East-Indies, did by their instructions and directions, in writing, under their hands, directed to the said Company's president and council of Fort St. George aforesaid, after taking notice, that in order to remedy so far as might be the inconveniences occasioned by the misconduct of their late president and council, they had thought proper to constitute, and by their commission under their seal, dated the 11th day of April, 1775, had constituted and appointed them to be their governor and council of Fort St. George, for governing and managing all the said Company's affairs on the coast of Coromandel and Orixá, and all their forts, factories and settlements thereunto belonging, subject however to the limitations and restrictions contained in a late act of parliament, intituled, "An Act for establishing certain Regulations for the better Management of the Affairs of the East-India Company, as well in India as in Europe;" and also taking notice, that as the solemn promise made by their governor and council, at the request of the nabob of the Carnatic and the king of Tanjore, to guarantee the treaty of 1762, had been fully approved by the Court of Directors of the said United Company, they could not but consider the public faith of the Company as forfeited, and the honor of the British nation deeply affected by the measures taken for dethroning the king of Tanjore, whose kingdom had been wrested from him by the servants of the said United Company, and put under the government of Mahmud Ally Khan, in direct violation of that treaty, and contrary to their repeated orders and instructions, which had uniformly and expressly prohibited them from attempting to enlarge their own or the Nabob's dominions; and also in opposition to the letter and spirit of the Nabob's public declaration to the king of Tanjore's vacceel, wherein he affirms, that it was not his intention to take the fort and country of Tanjore to himself, but to secure them for the benefit of the king of Tanjore's family, and to place a proper person of his kindred on the throne: and also taking notice, that having resolved to contribute so far as in them laid towards the restoration of the king of Tanjore, which by every tie of honour they conceived themselves bound to do, they thereby directed the governor and council of Fort St. George, that they should take the most effectual measures without loss of time, for securing the person of the king of Tanjore, and that they forthwith should appoint him a proper guard for his protection, and also for the protection of his family, and inform him that they, meaning the said United Company, had determined to place him upon the throne of his ancestors upon certain terms and conditions to be agreed upon for the mutual benefit of himself and the said United Company, without infringing the rights of Mahmud Ally Khan, nabob of

the Carnatic. And the said Attorney General of our said lord the king, further giveth the Court here to understand and be informed, that the said instructions and directions under the hands of the Directors abovenamed, afterwards, to wit, on the same day and year last aforesaid, at Westminster aforesaid, in the said county of Middlesex, were delivered to the said George lord Pigot, and afterwards, to wit, on the 11th day of December, in the year last aforesaid, the said George Stratton, Henry Brooke, Charles Floyer, and George Mackay, severally had notice of the said instructions, orders, and directions, to wit, at Westminster aforesaid. And the said Attorney General of our said lord the king, for our said lord the king, further giveth the Court here to understand and be informed, that the said George lord Pigot, by virtue of the power so given him as aforesaid by the said United Company, and in obedience to the said instructions and directions, soon after his arrival at Fort St. George aforesaid, to wit, on the same day and year last mentioned, did begin to put in execution the said instructions and directions for restoring the said king of Tanjore to the throne of Tanjore, and the said council of Fort St. George did, pursuant to the said directions and instructions, restore the said king of Tanjore to the throne of Tanjore, and was about to proceed as far as in him the said George lord Pigot lay to secure the said king of Tanjore in the possession and enjoyment of the territories and revenues of the said kingdom of Tanjore. And the said Attorney General of our said lord the king, for our said lord the king, further giveth the Court here to understand and be informed, that the said George Stratton, late of Westminster, in the said county of Middlesex, esq. Henry Brooke, late of the same place, esq. Charles Floyer, late of the same place, esq. and George Mackay, late of the same place, esq. being subjects, and each of them being a subject of our said lord the present king, and being of the council of the said United Company, of their principal settlement of Fort St. George and Madras Patnam aforesaid, and being of wicked and seditious dispositions, together with divers other wicked and evil disposed persons, whose names are at present unknown to the said Attorney General, wickedly, maliciously, and seditiously intending, devising, and contriving to deprive the said George lord Pigot of the government and command of the said fort and garrison of Fort St. George and city or town of Madras Patnam, and of all the forces then employed for the service of the said United Company within the same, and to deprive the said George lord Pigot of his said office of president and governor of and for all the affairs of the said United Company on the coasts of Coromandel and Orixá, and of the Gingee and Maratta countries, and of all the territories thereto belonging, and of all and singular the forts, factories, and settlements, territories, countries, and jurisdic-

tions thereof, and unlawfully to obstruct, hinder and prevent the said George lord Pigot from discharging his duty, and the trust reposed in him in carrying the said instructions and directions of the Directors of the said United Company into execution and effect, and to assume to themselves the government and command of the said fort and garrison of Fort St. George and city or town of Madras Patnam, and of all the forces which were employed for the service of the said United Company, within the said fort, garrison, and city or town, and of the government of all the affairs of the said United Company on the coasts of Coromandel and Orixa, and of the Gingee and Maratta countries, and of all the forts, factories and settlements, territories, countries and jurisdictions thereof, on the 24th day of August, in the 16th year of the reign of our said lord the king, and within the jurisdiction of the president and council of the said United Company, of their said principal settlement of Fort St. George and Madras Patnam, to wit, at Westminster aforesaid, in the said county of Middlesex, together with divers other persons whose names are at present unknown to the said Attorney General, unlawfully, wickedly and seditiously, did form themselves into a council, and did then and there confer the command of the army of the said United Company within the said presidency of Fort St. George, and also of the garrison of Fort St. George aforesaid, upon James Stuart, and then and there order the said James Stuart to put the said fort and garrison, and the fort house there, under the command of them the said George Stratton, Henry Brooke, Charles Floyer, and George Mackay, and the said other persons, whose names are at present unknown to the said Attorney General, and did then and there further order the said James Stuart, if he should see it necessary, or that resistance should be made to their said orders, to arrest the person of the said George lord Pigot, then and there being a subject of our said lord the present king, and so being governor and commander in chief, and president and governor as aforesaid; and that they the said George Stratton, Henry Brooke, Charles Floyer, and George Mackay, and the said James Stuart, together with the said persons so unknown to the said Attorney General as aforesaid, afterwards, to wit, on the same day and year aforesaid, within the jurisdiction aforesaid, to wit, at Westminster aforesaid, in the county aforesaid, with force and arms, to wit, with swords, guns, pistols, and other offensive weapons, and with a military force, did make an assault upon the said George lord Pigot so being such subject as aforesaid, and in the peace of God, and of our said lord the king, and then and there being governor and commander in chief, and president and governor as aforesaid, and did then and there arrest and imprison the said George lord Pigot, and then and there un-

lawfully and by force, did deprive the said George lord Pigot of the power and capacity to exercise his offices of governor and commander in chief and president and governor aforesaid; and that they the said George Stratton, Henry Brooke, Charles Floyer, and George Mackay, together with the said other persons whose names are unknown to the said Attorney General, did there, with a military force, keep and continue, and cause to be kept and continued the said George lord Pigot, so imprisoned and deprived of the power and capacity to exercise his said offices from thence for a long time, to wit, for the space of nine months, and did there, during that time, unlawfully assume and exercise the government, direction, and management of the army of the said United Company within the said presidency, and of the fort and garrison of Fort St. George, and city or town of Madras Patnam, and of all the affairs of the said United Company on the coasts of Coromandel and Orixa, and of the Gingee and Maratta countries, and of all the territories thereunto belonging, and of all and singular the forts and settlements, territories, countries and jurisdictions thereof, and other wrongs to the said George lord Pigot, then and there did, to the great damage of the said George lord Pigot, and against the form of the statute in such case made and provided, and against the peace of our said lord the king, his crown and dignity. And the said Attorney General of our said lord the king, for our said lord the king, giveth the Court here further to understand and be informed, that the said George lord Pigot, on the 24th day of August, in the said 16th year of the reign of our said present sovereign lord the king, and before and afterwards was governor and commander in chief of the fort and garrison of Fort St. George and the city or town of Madras Patnam in India, the same during that time being one of the principal settlements of the said United Company in India, and of all the forces then employed for the service of the said United Company within the said fort, garrison, and city or town, and also president and governor of and for all the affairs of the said United Company on the coasts of Coromandel and Orixa, and of the Gingee and Maratta countries, and all the territories thereunto belonging, and of all and singular the forts, factories and settlements, territories, countries, and jurisdictions thereof; and that on the same day and year last mentioned, and before and afterwards, the said George Stratton, Henry Brooke, Charles Floyer, and George Mackay were of the council, and each of them was one of the council of the said United Company, of their said last-mentioned principal settlement, for governing and managing all the said Company's affairs upon the coasts of Coromandel and Orixa, and the Gingee and Maratta countries, and governing the said last-mentioned principal settlement of the said United Company, and all other the

forts, factories, and settlements of the said United Company, within any of the said territories (that is to say) at Westminster aforesaid, in the said county of Middlesex. And the said Attorney General of our said lord the king, for our said lord the king, giveth the Court here further to understand and be informed, that the said George Stratton, Henry Brooke, Charles Floyer, and George Mackay, being of the council, and each of them being one of the council of the said United Company as last aforesaid, and unlawfully and maliciously contriving and intending to aggrrieve and injure the said George lord Pigot, so being governor and commander in chief, and president and governor as last aforesaid, and to obstruct, hinder, and prevent the said George lord Pigot in the exercise of his said offices, and to assume to themselves the government and command of the said fort and garrison of Fort St. George and city or town of Madras Patnam, and of all the forces which were employed for the service of the said United Company within the said fort, garrison, and town, and of the government of all the affairs of the said United Company on the coasts of Coromandel and Orixá, and of the Gingee and Maratta countries, and of all the forts, factories and settlements, territories, countries, and jurisdictions thereof, on the said 24th day of August, in the 16th year aforesaid, within the jurisdiction of the president and council of the said United Company, of their said principal settlement of Fort St. George, and city or town of Madras Patnam, to wit, at Westminster aforesaid, in the county aforesaid, together with divers other persons, whose names are at present unknown to the said Attorney General, unlawfully, wickedly and seditiously, did form themselves into a council, and then and there conferred the command of the army of the said United Company, within the said presidency of Fort St. George, and also of the garrison of Fort St. George aforesaid, upon James Stuart, and did then and there order the said James Stuart to put the said fort and garrison, and the fort house there, under the command of them the said George Stratton, Henry Brooke, Charles Floyer, and George Mackay, and the said other persons, whose names are at present unknown to the said Attorney General, and did then and there further order the said James Stuart, if he should see it necessary, or that resistance should be made to their said orders, to arrest the person of the said George lord Pigot, then and there being a subject of our said lord the present king, and so being president, governor, and commander in chief as aforesaid; and that they the said George Stratton, Henry Brooke, Charles Floyer, and George Mackay, and the said James Stuart, together with the said other persons, whose names are so unknown to the said Attorney General as aforesaid, afterwards, to wit, on the same day and year aforesaid, within the jurisdiction last aforesaid, to wit, at West-

minster aforesaid, in the county aforesaid, with force and arms, to wit, with swords, guns, pistols, and other offensive weapons, and with a military force, did make an assault upon the said George lord Pigot, so being such subject as aforesaid, and in the peace of God and of our said lord the king, and then and there being governor and commander in chief, and president and governor as last aforesaid, and did then and there arrest and imprison the said George lord Pigot, and then and there, unlawfully and by force, did deprive the said George lord Pigot of the power and capacity to exercise his offices of governor and commander in chief and president aforesaid; and that they the said George Stratton, Henry Brooke, Charles Floyer, and George Mackay, together with the said other persons whose names are unknown to the said Attorney General, did there, with a military force, keep and continue, and cause to be kept and continued, the said George lord Pigot, so imprisoned and deprived of the power and capacity to exercise his said offices from thence for a long space of time, to wit, for the space of nine months, and did there, during that time, unlawfully assume and exercise the government, direction, and management of the army of the said United Company within the said presidency, and of the fort and garrison of Fort St. George, and city or town of Madras Patnam, and of all the affairs of the said United Company on the coasts of Coromandel and Orixá, and of the Gingee and Maratta countries, and of all the territories thereunto belonging, and of all and singular the forts, factories and settlements, territories, countries, and jurisdictions thereof, and other wrongs to the said George lord Pigot, then and there did, to the great damage of the said George lord Pigot, and against the form of the statute in such case made and provided, and against the peace of our said lord the king, his crown and dignity. And the said Attorney General, of our said lord the king, for our said lord the king, giveth the Court here further to understand and be informed, that on the said 24th day of August, in the said 16th year of the reign of our sovereign lord the king, and before and afterwards, the said George Stratton, Henry Brooke, Charles Floyer, and George Mackay, were of the council, and each of them was one of the council of one of the principal settlements of the said United Company in India, called Fort St. George and Madras Patnam, otherwise Madras Patnam, otherwise Fort St. George and Madras, otherwise Fort St. George, otherwise Madras: and that the said George Stratton, Henry Brooke, Charles Floyer and George Mackay, being such council as aforesaid, together with divers other persons, whose names are at present unknown to the said Attorney General, on the said 24th day of August, in the said 16th year of the said reign of our said lord the king, with force and arms, to wit, with swords, guns, pistols,

and other offensive weapons, and with a military force within the jurisdiction of the president and council of the said United Company of the said last-mentioned principal settlement, to wit, at Westminster aforesaid, in the said county of Middlesex, in and upon the said George lord Pigot, then being a subject of our said lord the king, and in the peace of God and our said lord the king, and then and there being president and governor of the said last-mentioned principal settlement of the said United Company, did make an assault, and him the said George lord Pigot did then and there beat, wound and ill-treat, and did then and there imprison, and cause and procure to be imprisoned, the said George lord Pigot, and there unlawfully and against the will of the said George lord Pigot, did keep and detain, and procure to be kept and detained him the said George lord Pigot in prison, for a long time, to wit, for nine months then next following, and other wrongs to the said George lord Pigot then and there did, to the great damage of the said George lord Pigot, and against the form of the statute in such case made and provided, and against the peace of our said lord the king, his crown and dignity: And the said Attorney General of our said lord the king, for our said lord the king, giveth the Court here further to understand and be informed, that on the said 24th day of August, in the said 16th year of the reign of our sovereign lord the king, and before and afterwards, the said George Stratton, Henry Brooke, Charles Floyer, and George Mackay, claimed to be of the council, and each of them claimed to be one of the council of another principal settlement of the said United Company in India, called Fort St. George and Madras Patnam, otherwise Madras Patnam, otherwise Fort St. George and Madras, that is to say, at Westminster aforesaid, in the said county of Middlesex; and that the said George Stratton, Henry Brooke, Charles Floyer, and George Mackay, so claiming to be such council as aforesaid, together with divers other persons, whose names are at present unknown to the said Attorney General, on the said 24th day of August, in the said 16th year of the reign of our said lord the king, with force and arms, to wit, with swords, guns, pistols, and other offensive weapons, and with a military force within the jurisdiction of the president and council of Fort St. George aforesaid, to wit, at Westminster, in the said county of Middlesex, in and upon the said George lord Pigot, then being a subject of our said lord the king, and in the peace of God and our said lord the king, and then and there being governor of the said last-mentioned principal settlement of the said United Company, did make an assault, and him the said George lord Pigot did then and there beat, wound and ill-treat, and did then and there imprison, and cause and procure to be imprisoned, the said George

lord Pigot, and there unlawfully and against the will of the said George lord Pigot, did keep and detain, and cause and procure to be kept and detained, him the said George lord Pigot in prison, for a long time, to wit, for nine months then next following, and other wrongs to the said George lord Pigot then and there did, to the great damage of the said George lord Pigot, and against the form of the statute in such case made and provided, and against the peace of our said lord the king, his crown and dignity. And the said Attorney General of our said lord the king, for our said lord the king, giveth the Court here further to understand and be informed, that on the said 24th day of August, in the 16th year of the reign of our sovereign lord the king, and before and afterwards, the said George Stratton, Henry Brooke, Charles Floyer, and George Mackay, claimed power and authority in India, under the said United Company; and that the said George Stratton, Henry Brooke, Charles Floyer, and George Mackay, claiming power and authority under the said United Company, together with divers other persons, whose names are at present unknown to the said Attorney General, on the same day and year last mentioned, with force and arms, to wit, with swords, guns, pistols, and other offensive weapons, and with a military force within the jurisdiction then claimed by the said George Stratton, Henry Brooke, Charles Floyer, and George Mackay, under the said United Company in India, to wit, at Westminster aforesaid, in the said county of Middlesex, in and upon the said George lord Pigot, then and there being a subject of our said lord the king, and in the peace of God and our said lord the king, did make an assault, and him the said George lord Pigot did then and there beat, wound, and ill-treat, and did then and there imprison, and cause and procure to be imprisoned, the said George lord Pigot, and then and there unlawfully, and against the will of the said George lord Pigot, did keep and detain, and cause and procure to be kept and detained, him the said George lord Pigot in prison, for a long time, to wit, for nine months, then next following, and other wrongs to the said George lord Pigot then and there did, to the great damage of the said George lord Pigot, and against the form of the statute in such case made and provided, and against the peace of our said lord the king, his crown and dignity. Whereupon the said Attorney General of our said lord the king, who for our said lord the king in this behalf prosecuteth, for our said lord the king prayeth the consideration of the Court here in the premises; and that due process of law may be awarded against them the said George Stratton, Henry Brooke, Charles Floyer, and George Mackay, in this behalf, to make them answer to our said lord the king, touching and concerning the premises aforesaid.

In the King's Bench.

December 20th and 21st, 1779.

PROCEEDINGS

UPON THE TRIAL OF

THE KING,

against

GEORGE STRATTON, HENRY BROOKE,
CHARLES FLOYER, and GEORGE
MACKAY, Esquires.

BEFORE

The Right Hon. WILLIAM EARL of
MANSFIELD, L. C. J. and a Special
Jury of the county of Middlesex, at
Westminster-hall :

Upon an Information filed by ALEXANDER
WEDDERBURN, Esq. his Majesty's Attor-
ney General, against the several Defen-
dants, for depriving the right hon. GEORGE
Lord Pigot of his command and office of
Governor and President of the Council at
Madras, and arresting and imprisoning his
person for the space of nine months, &c. ;
to which Defendants pleaded, Not Guilty ;
thereupon his Majesty's Attorney General
joined issue.

Counsel for the Crown.—Mr. Attorney Ge-
neral, (Alexander Wedderburne) (a) ; Mr.
Solicitor General, (James Wallace) ; Mr.
Mansfield (b) ; Mr. Serjeant Walker ; Mr.
Lee ; Mr. Davenport ; Mr. Rous ; Mr. Lind ;
Mr. Woodhouse.

Solicitor.—Mr. John Smith.

Counsel for the Defendants.—Mr. Dun-
ning ; Mr. Kenyon (c) ; Mr. Arden (d) ;
Mr. Wilson (e) ; Mr. Chambre (f) ; Mr.
Piggott ; the hon. Thomas Erskine (g).

Solicitors.—Messrs. Gregg and Potts.

The information was stated by Mr. Lind,
and the cause then opened at large, by

Mr. Attorney General. May it please your
lordship, and you gentlemen of the jury ;
you have heard the information on which the
defendants are to be tried read to you ; I
shall avoid re-stating it, as I shall have occa-
sion for employing your time and attention
in the rest of what I have to trouble you with,
which cannot be short ; therefore it is only
necessary for me to observe to you, that the
defendants are here charged with no common

misdeemeanor, the assault and imprisonment
of their governor, which of itself is a very
heinous offence, as it is stated to have been
the means used by them to overturn the go-
vernment and put themselves in possession
of all the authority there, and not only pos-
session of an authority which gave them the
dominion over a very extensive country and
the rule over millions of people, but of what I
am afraid was of still more consequence, the
possession of the revenues.

Gentlemen ; this, in general, is the nature
of the offence with which they are charged.
Before I proceed to state the case to you, it
behoves me to give you an account of the
history of the present prosecution.

In the year 1777, an account arrived in
this country, early in the year, that in the go-
vernment of Madras in India, which to that
time had been considered as the most regular
and orderly of all the settlements this coun-
try possesses there, the governor lord Pigot,
(who, not a great while before, had been sent
out of this country as a man from his per-
sonal situation possessed of the most know-
ledge of the country, and the fittest person to
hold such authority,) had been not only de-
prived of the government, but imprisoned by
the members of his council. This account
first arrived here, in a Narrative published by
the defendants themselves, to put the best
gloss they could upon their act, and though
they had the advantage of telling their own
story first, yet it was received in this country
with universal indignation and alarm. The
general court of East India proprietors as-
sembled at one of their quarterly meetings,
and immediately voted that lord Pigot should
be immediately restored to the government ;
and gave directions to proper persons to carry
into execution this resolution. In the month
of April there was a change in the direction,
and various measures were taken for that
purpose ; at last, in May 1777, it was finally
determined to restore lord Pigot, and to re-
call those who had been concerned upon all
sides in the business that had happened at
Madras. In the course of that summer per-
sons were sent from this country to take the
command of the forces, to take upon them
the government, and with positive directions
to send home the actors in these disturbances :
they arrived in the beginning of 1778, they
took possession of the settlement, took upon
them the command of the forces from the
commanding officers who had been concerned
in the disturbances now imputed to the de-
fendants and others, and intimated the orders
of the company for them to return to Eng-
land : Long before that lord Pigot was no
more ! Directions were given to prosecute in
India those who by their situation as military
officers had been instrumental in the over-
throw of the government and imprisonment
of lord Pigot. In the mean time Mr. Stratton,
Mr. Floyer, Mr. Mackay, and Mr. Brooke
had, in pursuance of a direction sent out, for

(a) In 1789, C. J. C. B. and baron Loughborough ;
in 1793, Lord Chancellor ; in 1801, earl of Rosslyn.

(b) In 1804, C. J. C. B.

(c) In 1784, Master of the Rolls ; in 1788,
C. J. B. R. and lord Kenyon.

(d) In 1788, Master of the Rolls ; in 1801,
C. J. C. B. and lord Alvauley.

(e) In 1786, one of the Justices C. B.

(f) In 1800, one of the Justices C. B.

(g) In 1806, Lord Chancellor and baron Erskine.

that purpose, returned to England. This, as it was very natural to imagine, became a matter of enquiry; it would indeed have been a very culpable neglect had an enquiry not have been instituted respecting the consequences which had attended the acts of these gentlemen, they living in this country, and amenable now only to the judicature of this country. For that purpose the House of Commons directed, in the last session of parliament, the directors of the East India company to lay before them an account of the proceedings which had been had upon the very extraordinary events that I have just described to you to have happened at Madras in 1776. It appeared there, that directions had been repeatedly given for the trial of all the subordinate instruments that had acted under the authority of the present defendants. It did not appear, as matters then stood, that any directions had yet been given for the prosecution of those gentlemen who had been the principal actors, and who had derived to themselves the principal advantage from those acts. It was therefore without any dissension but with very general approbation determined to address his majesty to direct a prosecution to be carried on, and that prosecution according to the laws of this country is enabled to be carried on by an act which the repeated disorders in India had rendered exceedingly necessary. In consequence of this, orders were given to me to bring this cause before the court and jury, and in obedience to those orders I have now laid the prosecution before you. Gentlemen, with what propriety those orders of which I have now given you an account were issued, you will be better able to judge when you have heard the case I have to state to you. In stating that, there are two things extremely necessary; the one is, that you should be made to understand all the circumstances, relations and bearings of an affair existing in a country, the manners of which are totally different from ours, and with the history of which you can have but a general acquaintance; for that I am sure nothing more is requisite, than that you should bestow such attention as I dare say you have all resolved to bring with you to the trial of this cause. That once done, I shall have no doubt that, unequal as my abilities are to the task, your sentiments, and the justness of your own feelings, will make you understand how to know and feel the great importance of the cause you are to try, and the very great and uncommon consequence of the office you now take upon you as jurymen in this case; as you are not to decide upon particular rights, nor any rights that affect the interest of the government of this country, and inhabitants of this country alone, but to decide upon a case in which the justness of your decision is to affect the interest and happiness of millions in another part of the globe.

Gentlemen; in laying these things before

you, I shall be obliged to go into a little detail of matters of which I can give proof, but of which I don't expect to be called upon for a strict proof, because it will be necessary to state to you, before I come to talk of the actions of 1776, the situation of the parties, and the relation they bear to one another, and the affair upon which the business of the scene depended, by a detail of the prior history of that country as short as I can possibly make it.

I dare say it is known to most of you, that Madras was, at the beginning of last war, the principal settlement this country possessed in India. It is likewise not unknown to you, that in the course of the war, and a little antecedent to that, a project had been formed by a very bold and enterprising Frenchman, a M. Dupleix, to extirpate the English totally out of the East Indies, to gain to his nation, the French, all the power and influence of that country: Providence turned the project upon the author and his country!—The prosecution of that scheme was to be accomplished by the part Dupleix found means to take in the disputes of that country, in which to that time the French, the English, and all the Europeans had acted a very inferior part. They had been originally settled in fact for the purpose of trading, and before that period had very little share in those dissensions that had prevailed in that country. Madras, which was the principal settlement of the English, and Pondicherry, the principal settlement of the French, were both within the government of Arcot. Arcot itself is in the government of a larger district called the Decca. About the period I have been mentioning to you, the governor or person who had the government, called by the name of soubah of the Decca, who possessed a very ample power a great many years there, died, leaving a disputed succession between the son and grandson; and much about the same time, the nabob, for the governor of Arcot had the title of nabob, was killed in battle, leaving his children young: the policy of M. Dupleix was to take the part of one of the competitors for the government of the Decca, and at the same time to set up a competitor for the government of Arcot, in opposition to the son of the nabob, who was well known by the name of Mohammed Ali, and as the present nabob of Arcot was engaged in a war attended with various success, the principal point upon the part of the English was the establishing of Mohammed Ali in the government of Arcot; and upon the French, the establishing of their nabob in the government of the Decca. In the course of that war, after a variety of events, which I need not tell you are not material to the present object of enquiry,—which is only to make you understand the situation of Mohammed Ali, which I take to be essentially necessary to the understanding the merits of this case,—the whole force of the French

was collected upon the attack of Madras; if they had succeeded in that, there would have been an end of the English power upon the coast of Coromandel. That was defended by lord Pigot, the governor, in 1759.* I believe most of you are not unacquainted with the state of that siege, and the immense merit lord Pigot then acquired with this nation and the East India Company, for the very able and extraordinary defence of Madras made under his command. The French were repulsed, and not only repulsed, but the attack returned upon them, the English arms laid siege to Pondicherry and took it. With that siege ended the French power upon that coast entirely; the effect of it was, that in 1762 there was complete peace upon the coast of Coromandel where Madras is situated. The success of the English arms in that case restored perfect peace to all their places upon the coast of Coromandel, and established Mohammed Ali in the firm and undisturbed possession of his government of Arcot. Lord Pigot led him by the hand through all the difficulties of that war, till he left him established in complete, safe, and secure possession of the government of Arcot. Besides the government of Arcot, there are two other powers upon the coast of Coromandel; there were originally three—these are governments, not under the Mogul and nabobs the officers of the Mogul powers, but others, left by the Mogul princes under the government of the successors or descendants of the original princes of the country, professing the original religion of the country, and commonly known by the name of Rajah; there were two upon the coast of Coromandel, Mysore, and Tanjore; the third, though by the fortune of war, succeeded to the dominion of the nabob of Arcot. The dominions of the rajah of Tanjore were exceedingly rich, very fertile, not very great in extent, and not very strong; therefore in defence of the country by the inhabitants in the course of the war that ended in 1762, whatever part the rajah of Tanjore had taken, the peace established him in possession of the country, and subject to the tribute anciently paid to the Moguls, and before collected by the nabob. By that treaty the tribute was settled at four lacs of rupees, a little above 40,000*l.*; it was to be paid to the nabob of Arcot. Thus, at the period when lord Pigot left his government in India, which he had carried on for many

years, with universal approbation, and great honour, he left India in this condition; the nabob Mohammed Ali, the ancient friend of the Company, in full possession of Arcot, the rajah of Tanjore paying four lacs of rupees to Mohammed Ali, gained to him through the success of the English arms.

Soon after this period—I speak of lord Pigot's return to England—Mohammed Ali, who was much acquainted, from the intercourse he had with our countrymen in India, with the language and policy of our nation, conceived that natural disgust that a person greatly obligated is apt to entertain, of his too powerful protectors; but, added to that, the observation of what had happened in Bengal inspired Mohammed Ali with what he esteemed a just caution. He had seen one nabob overturned by the servants of the Company with a view to set up another nabob, by which means they gained profit to themselves; that nabob overturned and another placed in his situation, and that nabob overturned again; the observation of which inspired Mohammed Ali with the politic scheme of guarding himself against the like inconveniences upon his part. No treasury could have stood that test; but he devised to himself a scheme of borrowing from the principal servants of the Company at Madras sums of money at a considerable interest, either paid down or incurred; an interest once so high as 25 per cent.: borrowing sums of money at such interest, and making himself a debtor to them, gentlemen, introduced another thing, which was to give these creditors assignments upon particular parts of his revenue for their payment. This was attended with another advantage to himself; those assignments were usually placed in those parts where the collection must be exposed to danger, by which means he secured to himself a strong party among the servants of the Company at Madras, who were interested in the preservation of his power, and interested in making effectual to him the recovery of the most embarrassed and difficult part of his revenues. Events, that it is not material to state, after this, produced a war upon the coast of Coromandel, which was carried on by Hyder Ali the rajah of Mysore, which was terminated by no very honourable peace; the fact of this war I state only as it had the effect to increase the expences of and involve in a little difficulty those at whose charge it was carried on. Mohammed Ali entered into the war, and a considerable part of the charge fell upon him. At the conclusion of this war, the treasury of Mohammed Ali was supposed to be a little exhausted, and for the purpose of money-making there was no very obvious resource for him but the country of Tanjore. I stated to you that the country of Tanjore was subject to the annual payment of four lacs of rupees to the nabob of Arcot. At the close of the war with Hyder, that tribute which had run in arrears was demanded. Upon the part of the rajah

* Operations against the town of Madras were commenced December 14th, 1758, and the siege was raised on the morning of the 27th of February, 1759. See "A complete History of the War in India, from the year 1749, to the taking of Pondicherry in 1761," p. 38.

A very copious and circumstantial Narrative of the events which occurred during the siege of Madras, is given by Mr. Orme in his History of the Military Transactions of the British Nation in Indostan, book 10, vol. 2, p. 389, 2nd edition. See, too, some account of this siege in the Memoirs of Count Lally, pp. 14, et seq.

excuses were made for the arrear, and he said he and his country had suffered upon account of the war; that he had been at considerable expence in the assistance he gave in that war, that he was to compensate that again out of the arrear of his tribute, which was four lacs of rupees. Upon the other hand, the pretext was, he did not give any sincere assistance to the Company, and ought to pay something upon account of his supposed delinquency; and the servants of the Company, very improperly, and in an instance, as much deserving reprehension as any one act done in India, instituted a treaty, in which they agreed,—in violation of a peace made in which the rights of the rajah of Tanjore were the object granted—they agreed, by the power of the English nation, to attack this rajah of Tanjore, and assist Mohammed Ali, and put him in possession of the city of Tanjore, upon a pretence the rajah of Tanjore had not paid that tribute which was due to him. Accordingly, they marched and attacked Tanjore, and took the place; but the conclusion of that affair was only an undertaking, an offer, upon the part of the rajah of Tanjore to save the whole, to pay down a very considerable sum of money, of which money he was forced to borrow three parts. When they were upon the point of taking the town, whilst stipulating upon those terms, a very large sum of money was transmitted to the English army at the gates of Tanjore; they accepted of a very large sum of money as an indemnification for all the expences they had been at, and a considerable payment was made to Mohammed Ali. The conduct of that undertaking, and every thing relating to it, met with disapprobation as it deserved.

This treaty being concluded, and the rajah much impoverished by the resistance he had prepared to make, and the terms which he afterwards did make, was left in a situation still less able to resist; but it had not answered the purpose intended by it, and very soon after that, a new governor succeeded: in consequence of which a new war was set on foot, and a new expedition against Tanjore; for upon the revival of the several pretexts which had been used before, an agreement was made to put Mohammed Ali in possession of the dominions of Tanjore as forfeited to him, and give him the intire possession of a country, the revenues of which amounted to a million sterling, and to strip the rajah of them by the aid of the Company's forces. Those forces marched, and, after a feeble resistance, the whole of their object was completed, and the government of Tanjore completely overturned, the rajah imprisoned, and Mohammed Ali was put in complete possession. An account of this was sent home to Europe; and as soon as it was sent over to the directors, it was received with the most complete disapprobation, and it was immediately determined to undo every thing that had been done by the governor

and council. The Company sent out orders to remove the governor and reprimand the council, and immediately to restore to the rajah of Tanjore the possession of his dominions.

To accomplish this purpose, lord Pigot,—who, after the enjoyment of the honours of this Company for a great many years, was ready again to offer his services and return to India,—was sent out as governor to the settlement, and was sent out for the express purpose, and with an express commission, after removing the then governor and signifying the reprimand of the directors to the council, immediately to restore to the rajah of Tanjore the possession of the dominions then claimed by Mohammed Ali: Gentlemen, you can scarce conceive a gentleman better qualified for the office put upon him than lord Pigot seemed to be; with respect to Mahomed Ali, the influence lord Pigot had justly acquired with him;—he having been there from the year 1755, and had caused the restoration of all the dominions his father ever possessed to him, more secure and more amply provided for, which certainly gave him every degree of influence respect and gratitude could inspire: With respect to the members of the council whom he found at Madras, they were all, I believe, planted by his own hand; some of them, the young men of his household, bred up in his family, the foundation of whose fortunes he had laid before he left Madras; others of them, whose age did not put them in such situation, but were older men, whom his goodness had dragged out of obscurity; in short, one and all, if they had the feelings of men, must have felt the respect and reverence due to a patron and benefactor: and in respect to the settlement at large, lord Pigot carried with him from this country—what he always maintained in that country, and what he carried with him to an untimely grave—the character of possessing an undaunted resolution and an uncorrupted integrity. With such qualifications, no man could have been chosen more apt or fit to execute that office committed to him, difficult and delicate as it was, without commotion and disturbance, by the mere force of authority, and by the mere reverence and respect due to virtue and lawful commands. So accomplished, lord Pigot left this country, and arrived in that. Now mark the sequel, and what followed: What I have hitherto stated, I thought extremely necessary for your understanding the case. It was not the impertinent narrative of one who delights to relate stories of facts, which stand a little aloof from the circumstances of the present information. I now come to circumstances which require your close attention and minute investigation, and more precision in stating.

Gentlemen, lord Pigot arrived in December 1775. As soon as he came with the commission of governor, his first object was to carry into execution the immediate order and

directions of the Company, for the restitution of Tanjore to the rajah; and upon the first opening of the business, there did not seem to be any material difficulty to oppose lord Pigot; he was received by the settlement at large with all the respect and reverence which always accompanied lord Pigot. The members of the council all seemed to pay respect to lord Pigot, and deference to the commands of the Company. Upon the part of the nabob, the satisfaction to see again his ancient friend, his father, his protector, was expressed in all the terms of Eastern exaggeration, and his visits and attention to lord Pigot were uninterrupted, and such as lord Pigot might have expected from a person standing so highly indebted as the nabob did to him. When they came to the particulars of the business, upon the part of the nabob there was no direct and positive refusal when lord Pigot signified the orders of the Company to him; but the industry of the nabob was employed to gain time, to start delays, to state difficulties, to make objections; upon the part of lord Pigot, his first object being to restore possession to the rajah, which he intimated to him in consequence of the resolution of the council—I don't particularly state it, they are all ready in court and may be called for—lord Pigot intimated to him, the Company's forces must be sent to take possession of Tanjore: upon the nabob's part, his answer was very guarded and polite; Tanjore, he said, was his; the Company were his friends, and his friends' troops therefore might march and take possession of any place that was his. The setting up a claim at the same time that he quitted possession was incompatible with the orders lord Pigot carried out; however meeting with all the punctualities and prejudices of an eastern mind, the answer of lord Pigot to the nabob was civil, that the orders of the Company were to take possession; that they would take possession without any confusion and disturbance; but signifying, at the same time, that the orders must be obeyed, and that they could not admit his claim to Tanjore. The nabob stated he had been at great expences, and the claim of merit which he had with respect to this nation, but which had been fully compensated by the national respect shewn him; lord Pigot was urged only to delay till representation could be made to England by an application to the court of directors, who, he said, perhaps were not rightly informed of all the circumstances of the case; he desired a little forbearance, and protection from the execution of the orders, and to give him time; but if persisted in, the nabob would not break with the English; but he desired forbearance to make new application to the court of directors. All these acts, accompanied with all the demonstrations of good will, politeness, and attention applicable to eastern potentates, of the consequence nabobs usually are, lord Pigot without any difficulty was going to proceed upon: the business met with no sort of

obstruction from the council at first, so far from that, an instance happened at one of the councils, the date I don't recollect, one of the defendants, Mackay, proposed, as the shortest method of ending this business, to take the nabob prisoner; and having seized his person and put him in prison, then to take possession of Tanjore, and do as he pleased. With what intention that proposal was made by Mr. Mackay you are to judge by the sequel. Whether he intended to embroil or precipitate matters, or intended so to alarm the nabob as to make him try other means of application, if those means of applying to lord Pigot were not successful, you are to form your own opinion. Another member, sir Robert Fletcher, was not of opinion to seize the nabob's person; sir Robert Fletcher's opinion, as a soldier, agreeable to his profession, was not to wait those tedious delays and serious formality with an eastern prince, but to march the troops at once briskly upon the business; to take Tanjore and all the country by force; but the opinion was, all this was to be done provided so great an officer as himself was to take the command; and then the first possession of Tanjore, especially with a little appearance of resistance, is attended with consequences which I need not particularly point out to your observation. Neither of these projects did lord Pigot adopt; neither the military one of sir Robert Fletcher, nor the bailiff-like one of Mr. Mackay, of seizing the nabob by force when there was no occasion for making him a prisoner. Lord Pigot chose to proceed in his own way; this certainly was not an obstruction that led lord Pigot to think he had nothing to do but to moderate the zeal of the council to carry into execution the orders of the Company: lord Pigot found the Company's forces on the 9th of February 1776 took possession of Tanjore; the nabob, as I have already stated to you, having given that consent, but qualifying that with a sentence lord Pigot was not content with; but at the same time he avoided any occasion of quarrel or offence with the nabob. In the mean time this was only taking possession of the town and fort of Tanjore: The rajah, I ought to have stated, who was a prisoner at Tanjore, was, upon the Company's forces taking possession, set at liberty; but this was not restoring the rajah to the possession of the country, which means restoring him to the possession of the revenues; to restore him to the possession of the capital, and leave the revenues and the whole district of the country round, was not sufficient; for in that country the revenues, which consist of the corn growing upon the land, are collected in kind, the revenues of that corn and grain are collected in kind: upon that the prince depends for his subsistence; the share of the crop is the revenue of the prince. Lord Pigot thought the shortest way to settle all these disputes, and the safest way, was to have it attended with the least violence, was not to leave it to inferior

persons, but to set out himself from Madras to Tanjore, and upon the spot to give the proper order for putting the rajah in possession of his country, that is, the revenues of his country: another circumstance made it necessary to pursue this object, that is, the season of the year was so far advanced the state of the crop made it necessary there should be a decision upon the collection of the crop, and the possession of it; to have let the matter rest in suspense would have been to have left the nabob in possession of the revenues of Tanjore that year, and in actual possession of the crop; and there would have been more struggle, violence, and difficulty, to recover the possession of that from him and his people after he had once taken possession, than to proceed to put the country under the regular distribution of officers acting under the rajah, and by them to collect the revenues for the current year. In March 1776, it was moved in the council for lord Pigot to proceed to Tanjore, to carry into effect the Company's orders; and after discussing that in council, they unanimously agreed, upon the 25th of March 1776, that lord Pigot should proceed to Tanjore to carry into effect the Company's orders, the state of the crop not admitting any farther delay; I beg to keep that admission in your memory, as I shall find occasion to refer to it hereafter, 'the state of the crop not admitting any farther delay,' so that carrying into execution the Company's orders of putting the rajah in possession of the country, the revenues of which was the crop, was the subject of consideration.

Gentlemen; I pass over the minutes of some broils which made their appearance first in this council; though they were unanimous in the resolution, yet there seemed to have been a push made to induce lord Pigot to take with him as coadjutors some others of the members of the council; it was not put to the vote directly, but in a consultation which is to be read, you will find a peevish and an angry minute of sir Robert Fletcher's, though agreeing in the main, and not dissenting directly; whether that was from the effect of ill humour, or to provoke a degree of ill humour in lord Pigot, you are not now to enquire; but lord Pigot put an end to all the disputes by agreeing without any resolution or order of council to take in his company two gentlemen, the one a Mr. Dalrymple, and another member of the council in India, who is not particularly connected with lord Pigot, who was afterwards in the opposition, whose name was Jourdan; those two gentlemen he agreed to carry with him to Tanjore. Thus far we have seen all harmony, all agreement, all unity, towards the main point of carrying into execution the Company's orders, and restoring the possession of Tanjore to the rajah. Just before lord Pigot set out for Tanjore, he was, but slightly, told of some claims on the Tanjore country, which a Mr. Benfield, a person I shall often have occasion to mention to you, a name not at all familiar to lord Pigot;

very possibly Europeans might have private claims in the Tanjore country; lord Pigot at the time it was first mentioned paid little attention to it, he set off for Tanjore; this claim at first was not attended with considerable difficulties; they were easily surmounted by the temper or firmness with which lord Pigot conducted himself; this Mr. Benfield delivered in a letter to lord Pigot, desiring lord Pigot to interfere upon the subject of this claim: lord Pigot thought him to be a very small and inconsiderable man, and with this idea, he was not a little astonished when this person talked big of mortgages and assignments made by the nabob to him of the Tanjore country to the amount in English money of 250,000*l.* supposed to be lent by this Mr. Benfield to the nabob, upon security given by the nabob on the revenue of the Tanjore country. You will observe the revenues of that country amounted annually to 1,000,000*l.* so that one fourth of the revenues of this country was mortgaged by the nabob to this Mr. Benfield for security for the like sum of money borrowed by him of Mr. Benfield. When Benfield gravely talked of this demand, and in very magnificent terms, somewhat bolder than he had at first, he cautioned lord Pigot not to give up the possession of these revenues without the intervention of that claim, which he, Mr. Benfield, set up upon them. Lord Pigot in return to this manifesto or epistle, gave a very dry and cool answer, and referred him to the council of Madras, and said he only came there to execute the orders of the Company, and put the rajah of Tanjore in possession of those dominions; as for other business or claims upon that country, he must apply to the council; and concluded with an observation that such a claim was in opposition to the Company's orders.

Gentlemen; I omitted in its proper place to state the debt contracted by the nabob with the Company's servants, had been carried on year after year against the orders of the Company, in spite of their orders; indeed it was at last grown to such a height, they gave up the attempt to controul it, it appeared to affect the property of so many people; and it swelled to above two millions sterling, according to its present rate, notwithstanding repeated orders of the Company again and again against Europeans and servants of the Company committing any sort of oppression, and above all against their lending money to the princes of the country, for the most obvious of all reasons, he should not be a lender of money in a country, who has more power than another man, for that would be the means of oppression; notwithstanding the great debt of two millions to the Company's servants, which the Company had winked at, being compelled to it perhaps, they therefore at last had sent lord Pigot, who thought their orders not attended to in the supposed loan of Benfield's. Benfield applied to the council before my lord Pigot returned from Tanjore, they very properly sent

to lord Pigot the copy of Benfield's letter to them; and did not proceed upon this business till after the return of lord Pigot.—Gentlemen, I must desire you will here let me interrupt for a moment the thread of my narrative; to state that about the time Mr. Benfield complains to the council, you will find a complaint made by the nabob of the seizure of a servant of his at a place called Ariclore. Upon the 5th of May lord Pigot returned to Madras; he set out the 25th of March, settled the business at Tanjore, and returned the 5th of May; he laid before the council a diary of his whole proceedings at Tanjore. The council having examined all those proceedings at Tanjore, approved in general of all he had done all the time, I think, excepting only the scrupulous Mr. Mackay, who, though he had been of opinion that it was highly expedient to seize the person of the nabob, to make him a prisoner, in order to carry into execution the Company's orders,—yet, truly, his delicacy was exceedingly offended, he took notice of it in the minutes,—of lord Pigot's having, as he supposed, seized in the town a runaway servant of the Rajah's, who had run away with books of accounts. Such a difference had happened between January and May in the mind of Mackay: however that was but a slight matter, and the farther discussion of that business shewed the whole was misinformation and founded upon mistake; there was not the least ground for that complaint. Soon after this, Mr. Benfield's claim came forwards, and notice was taken at the council of the claims he had made, and a day was given to Benfield, and a letter written to him, to produce the vouchers of his claims, and give evidence in support of them. After several appointments to take into consideration his claim, and notices to come with his vouchers, they proceeded, upon the 29th of May, upon Mr. Benfield's claims. I shall endeavour now, to state to you who Benfield is, and what are the claims he has. In the first place, as to who Mr. Benfield is, I am really at a loss, for after all the enquiries of them who are likely to know, I cannot find the least trace of Mr. Benfield, in the early part of his history; I am not enabled to go farther back than 1772. In 1772, Benfield was the Company's servant in such a situation, that he was offered a preferment to go third in command to a settlement at a place called Balambanga. It was then thought a preferment for him; Benfield understood his own affairs better, and declined that offer and did not go; but so little was he in a situation to chuse for himself, that he was suspended for refusing to go third in council to Balambanga in the year 1772. In the year 1773, it is understood he got by some means or other into the nabob's family. In 1774 the suspension was taken off, and he was restored and again appointed a junior merchant in the Company's service, with a salary of 108 pounds a year.—In 1774, this gentleman had this salary as a junior mer-

chant in the Company's service,—and in 1775, he is lending money to the nabob to the amount of 250,000*l.*, which he asserted to be his own! He must be possessed of a most singular art of making gold in India, if by the savings from a salary of 108*l.* a year, 250,000*l.* could be lent by him. This is all I know; if I could trace his history farther I should be very glad to give it. I shall talk very boldly; I hazard nothing; if I have given a wrong account of him, it is easy to set me right: I have heard that Mr. Benfield has put up for the post, and is a candidate for the government of Madras. Now let me state what this gentleman's claims were;—there are four articles: first, he advances in the months of August, September, October, 1775, to the nabob's son, to enable him to lend money to the inhabitants of Tanjore, in order to cultivate the ground for the crop of the next year, for which it is said the inhabitants bonds were deposited, 129,629 pagodas; an assignment of part of the revenues of the Tanjore country, taken in November 1775, for 369,000 pagodas; the two other articles are, the one a draft upon the collectors in a part of the Tanjore country for 15,000 pagodas without any date specified; but the money said to be lent generally in 1774; the other a draft of the like kind, upon another collector, for the sum of 20,000 pagodas, without any specified date, but asserted to be lent in January 1775, which make all together 538,000 pagodas; in the whole, I think, about 250,000*l.* sterling.* Now let me beg a little, that you will carry your attention to the dates here; upon the first article, the advance of money begins in August 1775; upon the 2nd article, the assignment bears date only in November 1775; when the money was advanced is not at all stated; upon the two last articles, the dates of the draughts upon the collector of Tanjore are not given: the nabob, which is certainly true, was in the course of the year 1775 in possession of the Tanjore country; but I will prove to you, that it was perfectly known to the nabob, and that it was perfectly well understood by the members of the council of the settlement of Madras, so early as the month of May 1775, that the Company was to restore this country to the Rajah of the Tanjore country.—Gentlemen, you will mark the effect of that circumstance,—it was perfectly known in May, by the nabob and by those concerned in the government of Madras, that the orders of the Company were, to come and restore to the Rajah of Tanjore his country;—to take assignments therefore,

* With respect to these, and other somewhat similar transactions in which Mr. Paul Benfield was concerned, see Mr. Burke's admirable speech in the House of Commons, February 28, 1785, on the Nabob of Arcot's Debts—Burke's Works, vol. 4, p. 227, [8vo. edit. of 1802.] See too in the Edinburgh Review, vol. 20, pp. 113, 114, some passages relating to Mr. Paul Benfield cited from the above-mentioned speech of Mr. Burke.

and advance money in the month of August, after that was known, was not a very safe experiment for those who wished to put out their money upon sure securities;—to give assignments was not a very difficult matter for those who knew what was the nabob's case, that the possession of the revenues of that country were not to belong to him. Gentlemen, I stated to you, Mr. Benfield was by many orders apprized to produce his vouchers; you will hear from the consultations,—I shall desire to have them read,—no proof was offered; nothing that tended to establish, or give a colour for, a supposition that Benfield could have lent the money: if he had, was it difficult to prove it? Good God! if any of you had lent a sum of money, a sum great in proportion to your circumstances, though perhaps not bearing affinity to 250,000*l.*; if you had lent a considerable sum, could not you prove the advancement of the money? Of all facts, there are no facts so plain to be proved.—How does he attempt to prove it? He gives no colour to suppose he had the money to advance: my credibility would, I must own, have disposed me to hesitate a good deal upon all he offered to produce. What does he say as to the several assignments? Oh! they are registered at the cutcherry; I have the certificate of the nabob's officer; but the nabob will acknowledge it all.—That is to prove the advance of money.—In such a case the supposition is, no money has been advanced; and where the suspicion is that all is a fiction, all a fraud, and all a contrivance, I am bold to hazard the conjecture, that the whole was a device to keep the nabob in possession of the revenues of that year; with a chance for what might happen to keep that possession longer, with all the advantage of gaining one year's possession to himself, for which he was to pay at the moderate compensation of 25 per cent.: therefore the nabob says, “let me receive the revenue of a million, and I will give 250,000*l.* for it; I will pay it to Mr. Benfield, let him make the best interest he can, and make the best use he can of these assignments:”—therefore he was to give Benfield alone 25 per cent. to secure the remaining 75 per cent.: “Then let Mr. Benfield alone move this vast machine, let him secure this revenue to me, and let him take this 25 per cent.; he knows the method of coming at it, and may apply for these assignments as he thinks proper;”—this is the suspicion.—Is this suspicion removed by the acknowledgment of the nabob, signed by the nabob's officer, that is registered at the cutcherry? Where are the vouchers for the rest? What say you as to the articles of the money advanced? That goes a little beyond the nabob; the first article of the three months August, September, and October, is for money advanced to the nabob's son,—but in order to enable him to lend money to the inhabitants of the country—the cultivators of the land,—for which the bonds of the inha-

bitants are supposed to be deposited with Mr. Benfield. Where are those bonds? Why, says he, they are either registered in the cutcherry, or in the hands of some of my people to the southward. I dare say you doubt a little whether such a case will turn out in proof; I state it to be an impudent assertion, which he does not attempt to prove; but after repeated notice, to be ready with his vouchers and bonds, he contents himself with saying generally, Oh! they are registered in the cutcherry, or in the hands of some of my people to the southward!—Is this a proper way of talking of proofs? Was Mr. Benfield reckoning the people to the southward indiscriminately as inhabitants of the southward, from whom he was to receive the rents? Who they were does not appear.

This is his account at the time of meeting the council. It struck the gentlemen present so forcibly, that Mr. Benfield's assignments being opened and disclosed to them, there was not so full a communication as ought to be had upon the subject; and the resolution of the council upon the 29th of May was, that the assignments were not admissible; and that the claim of Benfield upon the inhabitants in general was not sufficiently explained; and that Benfield's claims in general were of a private nature:—a very wise determination; and, I dare say, from the state of the case, you will think it very just,—that his assignments were not admissible, that the claims of Mr. Benfield upon the inhabitants in general, were of a private and not of a public nature. So ended this council, upon the 29th of May, upon Mr. Benfield's claims. Now, you will be astonished to hear, that in so short a space of time, as from the 29th of May to the 3rd of June, by what magic I know not, perhaps you may guess, Mr. Benfield's claims, which had appeared to the council in general in the light I stated to you, struck the mind of a Mr. Brooke, one of the members of that council, in a very different way:—Mr. Brooke was seized with remorse at the injustice he had done Benfield; there was a wonderful conversion wrought upon his mind in 4 days; and in a council held upon the 3d of June, Mr. Brooke moved to reconsider the resolution upon Mr. Benfield's claim: lord Pigot had no objection, and considering Mr. Benfield's claims as claims of property, that a question of property should not be precluded by one determination of the council; though rescinding and reconsidering resolutions of council in matters of government, are of all things to be avoided; he said he would consider this as not within the rule; therefore Benfield's claims were reconsidered without opposition; but Mr. Brooke did not expect it would have passed so easily; and Mr. Brooke came prepared with a minute to support and account for the reason of his moving to reconsider Benfield's claims: and that minute Mr. Brooke thought fit to insert in the council. I shall not do justice to it without

reading it intirely, but I will tell you of what it consists. Mr. Brooke is pleased to give two reasons for having altered his resolutions; one is, that when Benfield presented his bill, he thought (and certainly did not mistake) that Benfield claimed the interposition of council upon his pretences, as a matter of right, and as a justice due to him upon the claim; but since that, he had found that he had mistaken the matter entirely, and that Mr. Benfield only claimed it as a matter of favour; and, having determined against him when he claimed it as a matter of right, now he found that Mr. Benfield claimed it as a matter of favour. That is one reason; the other is, he had read over, since the last council, the Company's general letter which lord Pigot carried out with him to India, directing the immediate restitution of the country of Tanjore to the rajah of Tanjore, and directing that in the strongest and most pointed terms in the course of that letter. I have before stated to you, they displaced the former governor agreeably to that letter, and he was to reprimand their council. Then he states, that the noble lord had undertaken the business of Tanjore, and that contrary to justice, there was this expression in it; the directors say in the letter, "We suppose that the nabob by the plunder of Tanjore, and by the possession of the revenues of Tanjore for more than two years, has acquired a considerable sum of money beyond all his expences." This latter passage Brooke quotes, and his comment upon the text is this; Now, says he, it is clear the Company meant to give the nabob the possession of the revenues of Tanjore—For what term?—for more than two years: they have said in their letter that they supposed by the plunder of Tanjore, and by the possession of the revenues for more than two years, he must have made a considerable sum of money; therefore, says Brooke, they meant to give him possession for more than two years: now he has not had that; and he might have made an assignment of them, for a time when that was to end. Mr. Brooke has not explained, the term for more than two years, might have continued as long as Mr. Brooke thought fit. These are the ostensible reasons; and when I have stated this as produced, though unnecessarily, by Mr. Brooke himself, I ask all of you, every man to lay his hand upon his heart and say whether he thinks I am straining the duty of an advocate, or putting too uncharitable a construction upon it, if I say boldly, my opinion and conjecture is, that it was not that reason, but Mr. Benfield's arguments, his assurances, and the communication of interest through Mr. Benfield, that must have operated the conversion of Mr. Brooke?

Gentlemen, this was upon the 3d of June. Upon the 6th, a Mr. Floyer, another of the defendants, arrived at Madras; he was sent out a member of the council, but with the

appointment of chief at Masulapatam: when he had arrived at Madras, he found matters in this situation; as I have stated to you, nothing had, before that, excited any great warmth in the council. There had been, and I beg you will not forget that there had been concomitant with Mr. Benfield's complaints, complaints from the nabob, ill-humoured and peevish, against lord Pigot personally; which only served for another question to be introduced in the council, at the same time Benfield's affairs came on; and when you find Benfield's business started, you will always find some complaint of the nabob's thrown in at the same time. But Mr. Floyer arrived upon the 6th, he took the oaths and his seat as member of the council. Mr. Floyer, it seems, with a great deal of delicacy with respect to business done in his absence, wishes not to vote in it, and gives in a long minute, stating that he declines to vote in such business of the council; Benfield's business is put off from the 6th to the 13th; in the interval you will find Mr. Floyer's doubts about voting lessen a good deal; however he opens the council on the 13th, with a florid and distinct state of the difficulties and his doubts in voting. They are got over, as the principal part of it turns upon want of information, from a sudden arrival in that part of the country to which it relates; a very singular effect is produced upon it notwithstanding, and Mr. Floyer votes; ill instructed as he states himself, hesitating, and doubting in his own mind, naturally, you would suppose, he would let that stand which was done in a former council, and confirm it; instead of that, the effect of doubt and uncertainty in the mind of Mr. Floyer, was, to incline him to overturn that which was done before, and he votes for rescinding the resolution of the 29th of May. Mr. Brooke by that time, it seems, was completely converted; and Mr. Brooke and Floyer overturned that resolution of the 29th of May, by a majority of 7 to 5. Having got this advantage upon the subject of Benfield's business, the business was assumed again. Mr. Mackay gave notice at the close of the council on the 13th, that he should have a motion to make the next day; the council opened, and lord Pigot, as in course, and in decency, and as the order of business ought to be always conducted, he being president, proposes a motion for the consideration of the council; when to his surprise, (as nothing particularly indecent had happened before,) Mr. Mackay stops it, saying, That he had given notice of a motion that he had to make; while at the last council he had said he had a motion to make at the next council; the question was then moved, and, by the number of 7 to 5, resolved, That Mr. Mackay having given notice of motion, the president was not to make his motion as president, but Mr. Mackay was to have pre-audience; the effect of Mr. Mackay's motion was this, that the mortgages and assignments

made by the nabob were valid. One would think that rather a hasty conclusion to make upon this state of it, but however it was voted by 7 to 5; the doubts of Mr. Floyer were entirely removed, and he again finds himself clear to vote these mortgages and assignments to be good, of which there was no proof given, nor any investigation; that surely was sufficient to throw a suspicion, instead of removing of doubts, and he among the rest votes the mortgages and assignments valid. The next motion of Mr. Mackay, was to recommend to the rajah, to restore to Benfield the last year's grain, and give him all reasonable assistance to recover his debts; lord Pigot thought, after Mr. Mackay's motion, whose claim extended only to one motion, that he as president might be heard: lord Pigot proposed for their consideration, whether it would not be fit (and stated a question upon it,) to write to the nabob to give information concerning these assignments; and to call for the accounts and for those papers that shewed his right to make the mortgages, and the validity of the mortgages themselves. That was a proposal that in decency he had a right to make; that was rejected, lord Pigot's motion was set aside, and Mr. Mackay's motion again voted for, to recommend to the rajah to restore to Benfield the grain; and his third motion was, that it be farther recommended to the rajah, to account with Benfield for the farther share of the grain that had been sown in 1775, in those parts where he had the assignments. After all these affairs, lord Pigot thought, having the opinion of those gentlemen so very clear upon a former occasion, that Benfield's claims were of a private nature, when it was permitted to him to make a motion in council, he thought it fit to try what they would say upon that resolution. He moved the question, that the claims of Benfield were of a private not of a public nature.—There was no doubt about it.—The question was moved; they gave their opinions upon it; a happy distinction struck Mackay; I do him the justice of being the author of it; First it was adopted in terms by one gentleman, then a little more florid by another: Mr. Mackay says, The claims of Benfield, so far as they regard Benfield, are of a private nature; so far as they regard the assignments of the nabob, which you recollect are to Benfield, they are of a public nature: which was in effect saying this; the claims of Benfield, so far as they regard Benfield, are of a private nature; so far as they regard the claims themselves, they are of a public nature: that satisfied the understandings of the gentlemen present, who adopted it; and thus it ended upon that consultation.

Gentlemen; sensible that I must detain you upon points which require your utmost attention, I pass over many instances that occurred in June after this day, of opposition to lord Pigot, and the most indecent and

most destructive conduct towards the governor; other resolutions of the council upon public matters, which had passed and were agreed to in the same way as Mr. Benfield's had been, were again moved to be reconsidered, and upon consideration, rescinded by a majority. It was impossible the government could have gone on in that state; resolutions which had passed one day, rescinded the next; he perceived it was from some influence that was very foreign to the proceedings of the council, which lord Pigot thought fit to direct for enforcing the orders of the Company; but whatever the nature of them were, those resolutions were passed without difficulty, or rescinded a day or two afterwards without shame or remorse. I pass over them, because I want to come more immediately to that which is the point of this business, upon which it hinges; you will observe, so far as restoring the rajah, and setting him up in an empty throne in Tanjore, no opposition was given; it was agreed to; but when the effectual restoration of the revenues of the country was hinted at, it was announced by Mackay at the consultations, there would be an opposition. He comes forward in favour of Benfield's claims; those claims make themselves strong by degrees: they had gone no farther than this, to recommend to the rajah to assist Benfield; and all they had done at their meeting on the 14th of June remained ineffectual, unless there was a person at Tanjore who would take care to give effect to it. You see obviously, what was the effect of these representations; they were so ill grounded, there would have been other representations against them upon the part of the rajah; they must have heard the rajah; time would have been gained, and an opportunity given, in the mean time, for a communication with the government at home; and perhaps a middle measure would have been taken. It became therefore, necessary, to accomplish their purpose, that there should be a person upon the spot at Tanjore, who would give to that recommendation the effect intended, and in short make it compulsory and carry it into execution: for that purpose, at the close of the month of June, a letter was sent to the council, written by colonel Stuart, second in command of the forces, to sir Robert Fletcher the commander in chief, asserting it to be the right of the second in command, to have the command of the body of forces employed at Tanjore, as being the most important command;—I should state to you here, that before this, before the importance of Benfield's claims was understood, colonel Stuart, as second in command, had claimed, and had been appointed to the command of the Company's forces stationed at Vellore; which, as the most important station of a military force, upon the coast of Coromandel, there was a much greater force there, than at Tanjore: the officer that commanded at Tanjore, was a

colonel Harper, an officer, in the whole of this business, of conduct unexceptionable, and behaviour perfectly blameless; his conduct was gentle and moderate; he gave no cause of complaint to any nabob; and great satisfaction to the rajah. Colonel Stuart's letter was presented to the council in the latter end of the month of June: it only lay upon the table, no motion was made upon it, nothing offered, nothing done. Upon the eighth of July, lord Pigot made a proposal to the council, that they should appoint a chief and council at Tanjore, to carry on the commercial business of the Company in that country; this proposal underwent a good deal of discussion, and was over-ruled; after which, lord Pigot said, as they were of opinion that establishment was not proper at Tanjore, he thought it proper that there should be a resident at Tanjore;—to that there was no objection, and my lord Pigot, upon the spot, immediately proposed Mr. Russel to be the resident there;—that proposition, upon lord Pigot's part, came upon a sudden; they were not prepared upon it, and not quite settled who was to go there; the consequence of which was, lord Pigot carried that question, Mr. Stratton voting Mr. Russel to go resident to Tanjore. That was carried by a majority upon the 8th; no sooner was the council broke up, than they were aware of the mistake they had fallen into; but afterwards, they had better directions, and more able advice interfered; and the consequence of sending Mr. Russel to Tanjore was immediately seen into; and the next day, the 9th of July, at a meeting of the council, colonel Stuart's letter was called for, which had been presented the latter end of June, in which colonel Stuart proposed to be sent to command the military force of the Company at Tanjore. What reason was there for it? Why remove colonel Harper?—The nabob had no objection to him.—The rajah was particularly desirous he should continue; though his character was blameless, why send for Stuart from Vellore his proper station? You will find upon the minutes no reasoning upon it, but the only thing like an answer which is given, is, he applied to sir R. Fletcher, who recommends it to the council; he is desirous they should pay a deference to the recommendation of the commander in chief; the vote was carried, and colonel Stuart appointed to command at Tanjore. After this, there is some little peace, the council are not called for some time; till towards the end of July, but during the interval you will find the period not unoccupied; for, if I am not misled by my instructions, you will find meetings and consultations frequent with Benfield, with the nabob, Brooke, Floyer, Mackay, Stratton, colonel Stuart, and sir R. Fletcher, private and unknown to the rest of the council, and unsuspected by lord Pigot, who suffered a great deal in this business from his frank,

soldier-like, openness of temper, which did not lead him to think there were designs plotting against him.—The next thing material is the 26th of July; Mr. Russel, who was appointed to be resident at Tanjore, had been named, soon after his arrival in India, with a committee, called a Committee of Circuit. It is necessary to explain to you, the Company in their instructions lord Pigot carried, had directed there should be a committee of their servants, sent to examine into the state of the Jaghire Lands and Northern Circars; a journey of some extent, which would take some time; but it was expressly guarded in the instructions, that committee should not set out, nor that business be undertaken, till the affair of Tanjore be completely settled. Mark that,—the committee was not to set out, nor that business be undertaken, till the affair of Tanjore was completely settled.—Mr. Russel had been appointed one of the committee, but there was nothing more in that, than if any other person had been appointed; besides Mr. Russel, there were upon that committee other members of the council, Mr. Dalrymple, Mr. Mackay, and a Mr. Dawson, who had set off for Europe, in whose place Mr. Jourdan, another member of the council, was proposed. Upon the 8th of July, Mr. Russel was appointed resident at Tanjore; and, to counteract the appointment of Mr. Russel, on the 9th of July, Mr. Stuart's letter was taken into consideration, and he was voted to command at Tanjore; upon the 26th of July, it was moved, that the committee of circuit should set out upon their business immediately;—it was opposed, upon the plainest of all grounds, that the Company's order directed, that first the business of Tanjore should be settled; and they objected that the time of year was improper for it to be settled, they could not be prepared for it; it required more time; and Mr. Russel was appointed to another more pressing business, and directly within the letter of the Company's orders: however, the resolution was carried, that the committee of council should set out forthwith; the consequence of which was, Mr. Russel was to go, Mr. Jourdan was allowed to decline accepting the office, Mr. Mackay is allowed to excuse himself from going, so that the pressing orders to set off for the circuit was mere pretence, there can be no doubt.—Lord Pigot moved at the said council, a very wise and fair resolution,—for besides the gentlemen present at Madras, there were members of the council at the distant settlements, who continued there and had no part in the disputes then agitated in the council at Madras,—lord Pigot therefore, moved, that the members of the council at the distant settlements might be called up to attend the board; this would not at all have answered the purpose of the gentlemen; they did not wish to hazard the sure majority they had got, and afterwards kept by the assistance of those two which I mentioned before; they

did not chuse to add to Mr. Benfield's friends and connections, any more than was necessary to carry the business through;—lord Pigot's proposition was therefore negatived: and in the latter end of July,—upon the 29th,—Mr. Mackay makes an excuse for not going the circuit; then instructions are prepared for colonel Stuart, who had notice given him to set out for Tanjore. From this time, from the 2nd of August, to the 19th, lord Pigot called no council; but in that interval you will find frequent meetings, held by Benfield with the gentlemen who are the defendants; and sometimes with the nabob; there was frequent intercourse between them, so that, during that time, you will find no reason to doubt the conspiracy was formed, to carry at all events the point of securing the revenues of Tanjore, at the hazard of overturning the government, and with a determination to stick at no measures to accomplish it. Lord Pigot called the next council upon the 19th, and the minutes of that council must be particularly read.—Lord Pigot turned in his mind the state of the disorders they had got into; seeing the difficulties he laboured under in the execution of the Company's orders, which it was his duty to carry into effect, he stated expressly his reasons, and proposed Mr. Russel might be sent to Tanjore, if it were but for a few days; the importance of sending Mr. Russel to Tanjore was extremely obvious and plain; it was of importance to the council likewise to send a person to Tanjore, a person who was designed to put into execution such orders as the council had voted the 14th of June; there was no doubt, with the command of the forces in his hands, that the rajah being left to himself must sink under it,—whatever objections he had in his mind must have given way,—without remonstrance, enquiry, examination, or the production of those accounts which might have falsified Benfield's claims: and Benfield must have been content if he had found the rajah was supported by those who were determined to carry the orders of the directors into execution. If a person was sent who was in confidence with the governor, undoubtedly the effect would have been, that the enquiry that had been negatived in the council must have been forced upon the council, in a shape so clear and distinct, that they could not for shame and remorse;—and in the shape which must have struck upon their minds, at least, what their conduct had been;—they could not hesitate a moment to go into that enquiry. However, this proposition of lord Pigot, that he might be sent for a few days only, was of course negatived; upon which occasion, Mr. Floyer takes the lead, and he moves for colonel Stuart's instructions to be taken into consideration; lord Pigot perceiving then the determination that colonel Stuart should go, and that no person upon the part of himself for executing the orders of the directors, should go to Tanjore;

he stated to them, what he understood to be the powers of the president; he stated it to them, as appears upon the minutes, that he conceived himself, as president, not to have a power to act against a majority, for so it has been falsely represented; but that, as president, he was an integral part of the government; that as president, he was possessed of that power, without which a majority could not act; that he, lord Pigot, withholding his concurrence, the act done without his concurrence, would be an act of a majority of the councillors, but not an act of that government which consisted of the president and council. Lord Pigot stated that to be the power and office of the president; and in stating it calmly and deliberately, he said to them, 'Gentlemen, consider what you are about; I will not sign the instructions of colonel Stuart; and the person who is to act under these instructions must act under his peril. I conceive they will be irregular instructions without your president, and will not justify the act you are about, passing such acts by force of a majority, which will be productive of farther confusion. If I withhold my concurrence, by adjourning the council, there is an end of the council; and here will be private violence and wrong done.' Lord Pigot stating these points, there are debates upon them, and they argue the matter extremely ill. The effect of it was an adjournment. Upon the 20th, the question was resumed again, and they enter into debate upon the president's power; there was a great deal of misquoting; then it was moved that Mr. Dalrymple said they could act without the president, Mr. Dalrymple says, "they are not my words;" and there was a dispute upon the import of what Mr. Dalrymple said. All that altercation consumed the business of the 20th; and when they come again on the 22nd, lord Pigot opened the meeting with a proposal to them, which, in my apprehension, takes away even the smallest pretence for excuse that there might have been for any violence, or for any of the subsequent violences which were committed;—this was a wise and salutary proposal of lord Pigot's, stating, they had got into considerable confusion; they denied his claim of power; then they got into a question which was very much personal; he therefore makes them this proposition; as to all the arguments upon my power, which I certainly will not exercise without the greatest necessity for it; as to the immediate objects of dispute, let the matter rest till there can be reference to, and the pleasure of the directors be taken upon it; and let us proceed in other respects with unanimity and order. He made a proposal to wave the decision upon the power, which he as president claimed to have;—that proposal, made by lord Pigot, did not answer their business; for you will find (and I am confident I shall be able to prove to you by demonstration), that upon the 22nd, measures

must have been taken to carry, at all events, and at the risk of every violence, into execution, the getting possession of the revenues of Tanjore; that was the serious fundamental object they had pledged themselves to perform: they had engaged themselves by bonds, stronger than iron,—in golden bonds,—to accomplish that object; and that they determined to pursue at the risk of all that might happen.—Thus a civil broil was started in the settlement.—They, upon all this, with dogged and obstinate silence upon the representing of lord Pigot, persevere in carrying into execution the orders of colonel Stuart; and said it should be a signature of their own; lord Pigot stops it, and charges Stratton and Brooke with acting illegally in this matter; and moves to suspend them, which put the bolt upon them and prevented their voting: this measure of lord Pigot came upon them by surprise; they were disconcerted to a degree; as the votes then stood they were a majority by lord Pigot's casting vote; that put an end to the proceedings of the 22d: the next day, which was the 23d, they assembled together by themselves; lord Pigot, however, gave out summonses for the council, in which he summoned all the members, except Stratton and Brooke. Now let me state to you, what, if they had meant any other than confusion and violence, and at all events to get rid of lord Pigot,—whose inflexible obstinacy to pursue the orders of the Company they knew would be an eternal obstacle in their way,—if they had meant otherwise, what might they have done? Gentlemen, you will bear this a little in mind; upon the 22d, as the council was then composed, by removing Stratton and Brooke, there was lord Pigot, and three who adhered to him, Russel, Dalrymple, and Stone, that made in the whole four; there were four upon the other side, Floyer, Palmer, Jourdan, and Mackay; there were then four and four present at that council; there was, besides that, sir R. Fletcher who was ill, but he had attended all their private consultations, therefore could have come to the council; if they had meant fairly and honestly only to rescind what had been done, their course was obvious, there were as matters then stood 5 to 4; they were all summoned to the council; they had nothing to have done but to have attended at the council, and stated their complaints against the violence which they said lord Pigot had committed the day before; to have stated them upon the minutes, and have moved such resolutions as they thought fit; but upon what lord Pigot himself laid down, he had not given them the least reason to suppose, or apprehend, he asserted power to do any thing whatsoever against the authority of the council; or that his power went any farther than to adjourn, and stop the proceedings of the council. It was a stop upon them, and from lord Pigot they had not the least reason upon

earth to apprehend any farther disturbance to the peace of the settlement.—But that is not the whole; upon the 23d, there arrived in Madras a Mr. Lathom, who had attended no council, whose vote was unknown, who came for the first time to the council in obedience to a proper notice to attend the council upon the 23d, who upon the 23d, voted with lord Pigot. He was only one, and his opposition to lord Pigot could be nothing; therefore he acquiesced and assented to what was done; upon the 23d, they could not tell how his vote would be; but Mr. Lathom made six, when added to the five. If the opinion of those six had been for lord Pigot, he would only have made a part of them: with the numbers standing as they did, they did not attend the council, they did not obey the summons of lord Pigot.—But they did what? met themselves in private; and sent a protest to lord Pigot and the council who were met, by a notary, signed by them all, complaining of this act of suspending Brooke and Stratton; and they issue an order to colonel Stuart, which is dated at 3 in the afternoon (for I state the dates as they themselves have represented them); that is an order of a very singular nature, and must be read to you; I only state the purport of it; in short it delegates all power and authority to colonel Stuart, and particularly directs him, in case he should think it necessary, to arrest the person of lord Pigot.—This is dated at 3 in the afternoon; when it was delivered to him I do not know; but this I know, it came to colonel Stuart not unexpected; and that order to arrest lord Pigot, and the measure to take possession of lord Pigot's person by force, was not the birth of that afternoon, nor was it the birth of the 23d, nor was it conceived, I believe, in consequence of any thing that happened upon the 22d; for you will find in evidence, that Mr. Benfield,—a name never to be forgotten in this business,—had communications, as I have stated to you, with the members of the council, with colonel Stuart, and with the nabob; but many days before the 22d, a trusty servant of Mr. Benfield's, was sent with directions to put himself under colonel Stuart's orders, to be provided with a chaise and horses, and to take care to have them always in readiness to receive such orders as he should give him. You observe the orders bear date at 3 in the afternoon; upon that 23d, colonel Stuart comes forwards in this business; upon the 23d, between 11 and 12 in the forenoon, that servant was sent back again to colonel Stuart; there he receives his final orders from colonel Stuart to have the chaise and horses posted at a particular place.—Now, I say, antecedent to the orders of the 23d (and I am intitled to conclude antecedent to all that happened upon the 22d), the determination was taken, and the conspiracy formed, to seize the person of lord Pigot, if by other means it was not possible, (and I believe by no other means

it was possible) to carry their measures with respect to the revenues of Tanjore: so it passed upon the 23d. Upon the 24th, lord Pigot, suspecting no intention of violence, having passed that day in giving directions for the government, for the greater part of it in company with colonel Stuart, going in the evening to sup in the garden-house, and colonel Stuart with him,—he was arrested, put into a post chaise, which was the post chaise of Benfield driven by the postillion, who received directions from colonel Stuart.—He was taken prisoner by colonel Eidingtoun with a party of seapoy troops, and put into custody of major Horne, at the Mount. These are the general circumstances of this story; the particulars of the detail, if I were to go into it, would, I am persuaded, shock your nature: I will not go into it, but I will read to you as the strongest and best evidence I can give to you, from the account these defendants themselves have put their own name to, and stamped with their own mark, and transmitted to England, of that transaction. I desire no other method of exciting your horror and detestation of it than reading the account they give in cold blood in attempting to palliate it. Thus lord Pigot is lodged in the custody of major Horne prisoner; there he was arrested, if arrest can be applied to it: now mark the sequel,—this is upon the 24th,—colonel Stuart justifies the orders, and says they were the orders of an officer, who was the proper military officer to major Horne, and directing his prisoner should be guarded, and be always in sight of an officer.—Supposing all the other things right, this was not to be found fault with; but there is an order of the next day, for which I am happy, from the regard I have borne him, that colonel Stuart's name is not to it, but only Stratton, sir R. Fletcher, Brooke, Floyer, Mackay, Palmer, and Jourdan.

That order is to major Horne, which I must read;

“Sir; Mr. Claud Russel having last night made attempts to get the main guard under arms, and as he and his associates may endeavour to send letters to our garrisons; we request you would endeavour to prevent their conveying papers to lord Pigot's hand, to be signed by him; or their holding correspondence with him, whilst he is under your charge, unless in your presence.”

This is so far matter of business; now comes a remarkable passage; “*As your last resource in any attempt to rescue lord Pigot, his life must answer for it, and this you are to signify to him.*” Postscript, The nabob has been applied to, for a party of horse to be put under your command, and they are for the purpose of conveying quick intelligence to us, and for such other purposes as you shall see necessary.” This order is dated the 25th, and sent to major Horne. Gentlemen, I am sure you anticipate me in your observations upon it.—If we turn to history,

assassination was never commanded in plainer terms; if you go even to fable, written by those best acquainted with the turn of the human heart, but what is put in the mouths of the worst of characters, the directions are in terms scarcely so plain as this.—Shakspear, that master of human nature, in his Richard the third, and Macbeth, when he intimates the purpose of murder, it is not in terms so plain:—“Why, Buckingham, I would be king;”—That is all the hint that he wishes his two nephews to die. These orders are, “If any attempt is made to rescue lord Pigot, his life must answer for it.” As to the postscript, “The nabob has been applied to for a party of horse, for the sake of quick intelligence,” that is ridiculous:—that was not the case:—There is another hint given—“or for such other purpose as you shall see necessary;” that was, for such a purpose as European troops would not execute. Gentlemen, they speak of an attempt to rescue;—if any attempt to rescue lord Pigot, his life is to answer for it.—His life! There are but too many instances where, under the notion of preventing a rescue, unfortunate rulers have been imprisoned by their enemies, and have fallen sacrifices by little broils having been excited for the purpose.

Strange ideas of danger, upon the 29d, strike the imaginations of these gentlemen; and in consequence of it, they determine that lord Pigot should remove to a much greater distance than the Mount, and be put under very different custody from major Horne's; accordingly, they determine he was to be removed, under the care of colonel Eidingtoun, the officer that first seized him, to a very considerable distance:—I am not sure whether it was lord Pigot's suspicion, or that it was their intention to carry him to a place of small circumference, to a fortress called Chingleput, at about the distance of 36 miles from the place where he was; for that purpose, upon the 27th they address a letter to major Horne, in which they say “We have this day intercepted certain letters which give us some grounds to think there is an intention to tamper with the soldiers of this garrison, and also those of your corps, in favour of lord Pigot; this obliges us to come to a resolution of removing his lordship without delay to a place of more safety. We have for this purpose employed colonel Stuart to take the measures he thinks proper for conveying lord Pigot in safety to the place of his destination.—The adjutant general will be employed to receive his lordship from you this night, so soon as it can be done, without giving unnecessary alarm to lord Pigot's family.”

“Postscript. We give you this early notice to prepare for what is to happen this night; but you are not to divulge it to any one.”—What happened that night?—Colonel Eidingtoun in Benfield's chaise—(some of the nabob's horse upon the road)—makes his appearance between ten and

eleven at night at the Mount; they apply to major Horne, and acquaint him they come to take his prisoner lord Pigot, and desired he might be delivered to him. Lord Pigot, very properly, (aware of the danger of it, and as he had known major Horne, and believed him to be what the sequel proved, though employed in such a business, a man of honour and an honest man,) addressed himself to Horne, and claimed of Horne in a most feeling manner protection; as he thought himself intitled to it, as a man, and an officer, from a person he long had a regard for. The orderly men were drawn out to receive colonel Eidingtoun and his party; lord Pigot, after addressing himself to major Horne and claiming his protection, addressed himself to the men, and told them with many of them he had fought at the siege of Madras; they were old soldiers and witnesses of the dangers he had gone through with them, and begged they would not permit him to be delivered up to Eidingtoun, whom he looked upon as an assassin; he begged they would protect his life; that they would not suffer their former fellow-soldier, an Englishman, to be taken from their guard where he was safe; and to be fetched away by those with whom he thought himself not safe. The effect of this address upon the part of lord Pigot, was this, the honest men were moved with indignation. Colonel Eidingtoun called out to the soldiers, 'No doubt you will obey your orders.' There was a profound silence; no man advanced to obey them: he repeated his exhortation again, with threats, which produced in their minds no alteration; they shewed a sulky angry countenance, which intimidated the officers, who were obliged to give way to the just sentiments of their men; they dreaded the effect of this change in the minds of those Englishmen who were attached to lord Pigot, and who abhorred the idea of dragging him along, during the darkness, of the night, under the custody of a man who had once violated his duty to lord Pigot, by putting his hand upon his person; where he was to be carried and to what distance they knew nothing of. To their honest indignation, to the sentiments of Englishmen starting up in their breasts, lord Pigot owed his preservation, I do verily believe.

Then major Horne very judiciously took the part to say to lord Pigot, if he would give his word there should be no disturbance, he would be answerable for his person to colonel Eidingtoun till they had farther orders; that word was easily and readily given, for lord Pigot's conduct from the beginning, was to recommend to his friends to prevent all disorders, that there should be no civil broils, that there might be no confusion in Madras.

Gentlemen, these circumstances warrant me in the conclusions I have drawn, upon the intention of that order to major Horne; but I am farther confirmed in it, by a passage I will read to you from the defence made by the

present defendants upon a charge brought against them, after the death of lord Pigot, by the coroner's inquest at Madras; I will read the passage, and appeal to the force of your observations upon it: "Had we had any intention to take away his lordship's life, could fortune have thrown a more favourable opportunity in our way, than when he resisted our orders to remove him to Chingleput? were we capable of entertaining so horrid an idea we might have executed it then, and sheltered ourselves under the law; for we will remark to you, that we were not only members of the government, but also justices of the peace; and our lenity on that occasion surely demonstrates, that we chose rather to let pass with impunity a resistance to our orders on the part of lord Pigot, and a disobedience on that of colonel Horne and colonel Eidingtoun, than that his lordship should suffer the least personal violence."* I have read the passage; I only ask this question, whether it is possible to conceive these ideas could have entered into the heads of men, whose hearts had not been formerly framed to the ideas of homicide? They talk of *being sheltered under the law*; and state, in cold blood, the situation of lord Pigot, and their intentions to remove lord Pigot to Chingleput, and the resistance to that order even afforded an opportunity of taking off lord Pigot,—sheltering themselves under the law,—and they claim merit to themselves, that they did not then perpetrate that horrid purpose. Could such a new idea have entered the mind of any man, but such as had previously formed this conjecture to himself, that the attempt to carry him to Chingleput would afford an opportunity for putting him to death?

Gentlemen, this is a great part of the defence given in by themselves, and published by themselves, as an account of their conduct, which they gave upon an occasion not necessary to state to you: The coroner's inquest plainly, with a very laudable, but at the same time a very unskilful zeal, attributed the death of lord Pigot to the whole train of his imprisonment, and found it wilful murder. In answer to which, the defendants gave in a very long paper, of which this that I have just now troubled you with is a part.

I am now near the close of what I have to trouble you with, which has been very long.

* See p. 228 of a publication entitled "Original Papers; with an authentic State of the Proofs and Proceedings before the Coroner's Inquest, which was assembled at Madras upon the death of Lord Pigot, on the 11th day of May 1777; likewise the subsequent Proofs and Proceedings before the Justices at Madras, with the Opinions of the Judges of the Supreme Court of Judicature in Bengal. To the whole are subjoined, the Defence of Mr. Stratton and the other Members of Council, accused by the verdict of the Coroner's Inquest; and the separate Defence of Brigadier General Stuart, for himself and the Military under his Command, &c." London, 1778.

You now see, that on the 22d of August 1776, they were in full possession of the government. When they took possession of the usurped government, they found it necessary, and they suspend all who were in the opposition; as to Mr. Lathom, they turned him out of office, and all who had shewn any attention to lord Pigot, and filled the offices with their own creatures; and they gave,—which is usual in the East, I understand, when there is a governor deposed,—they gave a donative to the troops for their quiet behaviour in this business, and distributed amongst themselves all the offices of the government. To the time lord Pigot died, he continued in confinement: on the 11th of May 1777, his captivity and his life ended. He was seized with a violent illness at the Mount; then he was removed from the Mount to the Company's Garden-house, still under confinement—still under sickness; and the guards, whom the humanity of major Horne had taken off, were replaced again by the defendants' orders; and he died in imprisonment. And I cannot state a circumstance more strong of itself to move commiseration, and at the same time indignation, than the circumstance of lord Pigot's family begging his dead body of Mr. Stratton. At last they were permitted, by the goodness of that government that took place, to bury him with all the honours due to his station.

I have now gone through all the facts that seem to be necessary for your consideration upon the present occasion; I state them from such evidence, that I can have no doubt they will be proved to you exactly as I have stated: in a great part of the evidence you find I refer to the most unsuspected of all grounds; I ground myself not only upon the facts, but the accounts the defendants themselves have given—I judge them out of their own mouths. In other parts where positive proof cannot be had, the circumstances I believe you will find so positive, you will adopt those conclusions I have drawn, and will take them, when you have heard the evidence, to be more than conjecture. In the course of the narrative, there are undoubtedly many things that have escaped me; that has been a great deal too long, but it is impossible to comprize it in a smaller bulk; and at the same time that which might have escaped me, the gentlemen will point out to you, but stating the import of what it is, when the evidence is called for. I do not expect, therefore, upon the facts of this case, there will be any sort of controversy; and if there is no controversy upon the facts, I am at a loss to conceive what possibly can be the defence. I have read the volume published on the behalf of the four gentlemen accused at your bar upon their case; they have a legal majority,—be it so; how is that a defence? Does that empower them to depose and imprison their governor? Does that extend in any degree to a justification of the acts committed? In their own papers, they tell you they were driven to this by necessity,—they

state necessity,—they call it, in their reasoning upon it, in their letters to the directors, necessity: where was the necessity? In the first place, you observe, that before any dissension of a violent nature in the settlement, the question merely was this,—Mr. Russel was appointed to go as resident to Tanjore by lord Pigot; Mr. Stuart was likewise to go as commander in chief; that the defendants desired. Lord Pigot proposes they should both go together; they contend Mr. Stuart should go and Mr. Russel not go. Now, unless it was an absolute necessity to the very being of the government of Madras; unless the whole must have fallen into total confusion unless Mr. Stuart did go, and Mr. Russel not go to Tanjore,—there existed no necessity for the last quarrel; because the whole dispute between the governor and them might be quieted, if they had not persisted that it was necessary that Mr. Stuart should and Mr. Russel should not go. As to necessity, you will judge how affected all that is; and whether all the circumstances of the case more naturally lead you to conclude, that a scheme was formed in consequence of that interest Mr. Benfield's claims produced, and being at all events determined to be masters of the Tanjore revenues. But they say then, as to lord Pigot's conduct, the claims that he set up were unconstitutional, and nobody knows to what length they might have gone. They talk of supposed danger to sir Robert Fletcher; how far his claims were unconstitutional, I don't know how to enter into the examination. Lord Pigot's claim, in the manner you will hear stated, is a claim, not only decided by very great authority, but ought to be defended by every authority. The constitution, lord Pigot states to be the constitution of the government of the East India settlements, is to consist of a president and council; the president is an integral part of the government, and without a president the council are not at liberty to act, they cannot of themselves have private meetings and make themselves a government. Suppose, for a moment, lord Pigot was wrong, it can be of no avail to them: if it was an error, he has considerable support in it; especially when it was offered by lord Pigot, that all mention of his claim should be referred to the directors, and the middle mode was, it should be taken no farther notice of till the directors' pleasure should be known: Does that proposition made by lord Pigot deserve imprisonment and death? Is it a justification, or a proper defence for all the enormities they have committed? Unless I have worked up my mind to a very strange state of enthusiasm upon this business, I am convinced it is no more possible to frame a defence for the parties now charged against by the present information, than it would have been if the death of lord Pigot had happened in the instance stated by me; or been the immediate consequence of the act he did. If the purport of the letter had been all carried into execu-

tion, and lord Pigot had been the victim of that order, I conceive it impossible to defend that crime by any of the sort of topics that have been treated of by them.

I shall pass over them very slightly; I can only pick them up from such papers as they have published in their defence. If stated from those papers, I shall have an opportunity of making my observations upon them: if the excellent judgment of my learned friend should incline him to reject such a futile defence as they have already published, it would be very idle in me to mis-spend your time upon them. Upon the whole, you will be so good as to bear in your mind these principal facts:

That down to the mention of Benfield's claims all appeared quiet; all seemed in a regular course of carrying into execution the orders of the Company. From the moment of Benfield's claims;—the claims to the revenue of Tanjore are in the name of Benfield, but they in fact bottom themselves upon this; that the nabob Mohammed Ali is to continue possession of the revenues of Tanjore, as having a right, as he says, to the emoluments of a fourth part of that government crop, for the time that is stated;—these claims operate an entire change in the system, and in the votes and proceedings of council; they first operate the conversion of Brooke; then they gain the full vote of him and Floyer, and settle all the doubts in Floyer's mind; and by that means they effected a majority.

Gentlemen, you will attend to the evidence that will be given to you, and connect the circumstances of the meetings held amongst them; and you will find whether the proof accords with my assertions; that Benfield's claims are fictitious, and represent only the claim of the nabob to the entire possession of the revenues, with the advantages to accrue to those who had agreed to take one-fourth; and you must consider, upon the whole, whether all the circumstances together do not shew a conspiracy against the person of lord Pigot, to possess themselves of the government by securing his person,—not arising suddenly from any act of intemperance of lord Pigot in the execution of that government, but from partiality and design in them, as the means to accomplish the object they had in view, of preventing lord Pigot from carrying into execution the orders of the Company, for the restitution of Tanjore, which from such motives I have stated they were determined to obstruct that which it was his duty to persevere in, and in which duty I am persuaded he would have risked that life he lost at last in carrying into execution those orders of the Company?

Gentlemen, that is the whole of the case; I beg pardon for taking up so much time; if I have not been able to lay it before you with so much clearness and force as I wish, I am sure that will be amply supplied by his lordship, and from your attention to the case, as I do not doubt of a real attention, and a truly

commendable zeal which you and every honest man must bring to a cause like this, to vindicate the honour of this country in the eyes of all nations, and to wipe off this stain from the land.

Mr. Peter Mitchel sworn.

Examined by Mr. Solicitor General.

Sol. Gen. Are you in any office belonging to the East India Company?—I am secretary to the East India Company.

How long have you been in that office?—About nine years.

Were you brought up in the office?—I have been in the secretary's office about fifty years.

Sol. Gen. Look at that entry of the commission.

Court. They will not put you to the proof of authenticating the commission.

Sol. Gen. My lord, it is only in point of form.

Mr. Mitchel. This is an original minute, appointing lord Pigot governor and commander in chief of Madras, and the Coromandel coast.

Is the town of Madras one of the principal settlements under the government of Fort St. George?—It is the principal settlement under the government of Fort St. George.

Another Minute shewn to the witness. Is that one of the commissions?—It is.

[The greatest part of the evidence being contained in books, by the agreement of counsel on both sides, the letters, &c. were read by the associate as called for by them alternately. So much of the evidence as was, according to the course adopted, particularly produced on behalf of the defendants, has been indented from the other part and inclosed in brackets. They were accordingly read in the order of time as follows:]

First, the Commissions appointing lord Pigot governor of Fort St. George, &c.; dated the 4th and 5th of April 1775. Signed, P. Mitchel, Secretary.

The Order of the Court of Directors for the restoration of the king of Tanjore; dated April 12th, 1775.

From the beginning to the 11th article.

[From the 11th to the 21st article.]

The 24th article.

Att. Gen. That appointment of the Committee to make the circuit of the Northern Circar, your lordship sees is not to be made till the affair of the restoration of Tanjore is finally settled.

[The 35th article read.]

Evidence from the Books, called Copies of Papers, relative to the Restoration of the King of Tanjore, &c. agreed to be read.

At a Consultation, dated Fort St. George, 11th of Dec. 1775, page 33. Present, the right hon. lord Pigot, governor, president. Mr. Stratton, sir R. Fletcher, Messrs. Dawon, Brooke, Dalrymple, Stne, Palmer, Jourdan, Mackay,—Purport—letters from the Court of Directors to restore the king of Tanjore, read there, dated 12th of April, as received per the Grenville. Opinion of the Board; Great caution and delicacy necessary, in communicating the same to the nabob; the president is requested to communicate the Company's orders to the nabob, and endeavour to gain his compliance.

Extracts of Military Consultations, dated Fort St. George, 22d Jan. 1776, page 37. Present, Lord Pigot, and the same Council as before,—The purport: President acquainted the Board, after many consultations with the nabob, he had assured his highness it was impossible to accept his offer, that the Company's troops should garrison Tanjore under any conditions; which implied, the country should remain under the nabob's management. That he had received a long letter from the nabob; would see the nabob upon it.

Resolved by the Board, in the mean time orders be given to part of the Company's troops to hold themselves in readiness to march.

Extracts of Consultations of 25th January, 1776; present, the governor and council as before. President acquainted the Board, that the nabob had promised to give immediate orders to remove his troops from Tanjore, except 1,000 seapoys, who were to keep possession till the Company took possession.

Letter from the nabob read, says, "That he had received the letter from the president, and an extract of the Company's orders on the subject of Tanjore; that he was convinced the Company would not have given such orders without misrepresentations having been given them, and being totally unacquainted with affairs there. Complaints of the misconduct of Tuljaujee, that the expences he had been at were on account of Tanjore, two lacks and sixty odd thousand pagodas, and stands amazed after that expence in five years such an order should come from the Company."

[Mr. Dunning. Please to turn back to page 43, and read the last paragraph but one of the nabob's letter:—"The concern I am under since the perusal of these orders, &c. is so great, he was unable to express. His honour and that of his family, and affairs in general, will be hurt, and that of the Company, as well as the tranquility of the Carnatic."—Page 44. "Can I imagine that the gentlemen of the Company after approving of, should again disapprove of the measure? What will people say of this event? States the money lent him for

that very business he must pay, and his reimbursement is from the country of Tanjore," &c.]

Extracts of Military Consultations: 14th Feb. 1776, page 56. Present, lord Pigot and Council as before; read a letter from colonel Harper, dated Tanjore, 9th Feb. 1776; to inform the governor and council he had that morning taken possession of the Fort of Tanjore.

Extract of a Letter from the Governor and Council of Fort St. George to the Court of Directors, dated 14th Feb. 1776, page 57:

Your honours were advised in a short letter we wrote to you by the Salisbury, &c. Purport: That nabob pretended to have no objection to the country's troops taking possession of Tanjore; but expressed a desire to have the Company's orders for that purpose communicated to him in writing, informing them colonel Harper had taken possession on the 9th inst.

That the rajah was set at liberty agreeably to their orders: That the nabob was much in debt; that the revenue of Arcot for 12 months will barely pay them, and five lacks of pagodas due to his troops: That they had promised, if the nabob would disband his troops, and keep none but what were paid by the Company, they would intercede with the rajah for him to engage to pay the amount of the assignment out of the produce of the Tanjore country.

At a Consultation, dated March 11th, 1776, present, lord Pigot and Council as before: A letter produced from the nabob to lord Pigot, dated 26th Feb. 1776, p. 79.

Letter declining to send an account of the orders on the Tanjore country, and desiring to wait for further orders from the Company.

Letter to the nabob, dated 6th March, 1776, p. 81, desiring that he will give an order to his officers in the Tanjore country to relinquish all manner of authority when called upon by his letter so to do.

Same page. At a Consultation, present as before, dated Friday, March 22d.

A letter produced from the nabob, dated 19th March, 1776, urging his claim to Tanjore, and representing his distress if the Company's orders be executed.

Letter to the nabob in answer, dated March 22, 1776, from lord Pigot, acknowledging the receipt of a letter from the nabob of the 19th, acquainting him that the public faith is pledged to the rajah of Tanjore, as well as to his highness; that the orders of the Company to him were, that the country of Tanjore shall be again put into the hands of the rajah.

At a Consultation, present as before, dated Monday, March 25.

A minute of the president, that he judges from the nabob's letter, that he will not consent to the order of the Company being carried into execution respecting Tanjore; and the state of the crops not admitting any far-

ther delay, that he had made preparations for going to Tanjore the 30th of March, to place the rajah in full possession of the country.

The following question then moved by the president, Whether it was proper and necessary for him to go to Tanjore, for the reasons set forth as above?

Agreed in the affirmative unanimously.

A second motion from the president, That the governor may take with him to Tanjore any of the Company's servants, whether civil or military.

Carried in the affirmative—Mackay and Jourdan against it.

Sir R. Fletcher has no objection, provided they are not members of the Board.

Resolution, that the governor hold the same authority when present in any fort, factory, or settlement, under the presidency, as if present in Fort St. George.

Carried in the affirmative—Mackay and Jourdan against it.

Sir R. Fletcher objects to the governor holding any military command out of the garrison of Fort St. George, except over his own guard; and thinks his lordship ought not to go without a deputation from the Board, and moves, that two members of the council go with him. Messrs. Mackay, Jourdan and Palmer, for the motion, which was carried in the negative.

Ordered, that the governor be furnished with such parts of the last letters from England which relate to Tanjore.

Letter to colonel Harper at Tanjore, directing him upon the arrival of lord Pigot, to put himself under his command; dated, Fort St. George, 25th of March, 1776.

Sir R. Fletcher objects to the letter.

At a consultation present as before, dated Thursday 28th of March, 1776, president laid before the board a letter from the nabob, with his answer in consequence, p. 91.

Letter from the nabob, dated March 25th, 1776, containing farther arguments against the delivering up the Tanjore country.

LETTER to the Nabob from Lord Pigot, dated March 27th, 1776, from Fort St. George.

The honour I have in acknowledging the receipt of your letter of the 25th, gives me another opportunity of expressing my desire of executing the orders of the Company, as conformable to your wishes, as the faith of my nation, and my duty to my employers will permit.

(Signed) Pigot.

Letter from the nabob, dated 28th March, 1776, still refusing to resign the country of Tanjore,—desires to wait a farther answer from the Company.

The president acquaints the board, he means to take with him Mr. Dalrymple, Jourdan, Chambers as interpreter, and captain Wood; 30th March lord Pigot set off for Tanjore; 12th of April, letter came from lord Pigot to the council at Madras, dated Tan-

jore, April 8th, 1776, informing them of his arrival there.

At a consultation 24th April, p. 101. Present Geo. Stratton, esq. president, Messieurs Dawson, Stone, Russell, Mackay; sir Robert Fletcher; Mr Palmer. Mr Brooke indisposed. Letter read, received from lord Pigot, on the 17th, with a letter from the rajah of Tanjore, stating, on Thursday last the rajah went in procession round the town, and inclosing a copy of the public orders lord Pigot issued at Tanjore for the restoration of the rajah.

That public Order read, dated in Tanjore, April 11th, 1776, requiring all persons, civil and military, under the protection of the Company, to consider the rajah of Tanjore as again restored to his country in the full extent of that government, as at the conclusion of the Treaty in 1762. (Signed) Pigot.

Letter from the rajah of Tanjore read, to lord Pigot, expressing his gratitude for the friendship and extraordinary justice which the Company had displayed towards him in his restoration; praying they will allow him troops for the protection of his country, for which favour he will, with pleasure, assign the mout of his revenues the sum of four lacks of pagodas per annum, to defray military expences; he wishes the Company to buy of him at a reasonable rate, the grain of the present year, except what his country shall be in need of.

Minute on the letters from lord Pigot and the rajah of Tanjore. The offer of the rajah to allow four lacks of pagodas for the expence of the troops was contrary to the Company's orders. The Board are of opinion the rajah should be informed that no more of this sum than is sufficient to defray the expence of the garrison shall be required from him, and if he requires more force, he may have as much force as he chuses to provide funds for.

With respect to the last paragraph of lord Pigot's letter, recommending that the Company purchase the grain of the rajah, the members of the board give separate opinions: Mr. Mackay has no objections to purchase paddy* from the rajah, provided it is not grain mortgaged by the nabob to individuals, whilst he had the government of that country; he thinks that grain should not be disposed of till such time as the Board should have time to take that matter into consideration.

Mr. Palmer of the same opinion.

Mr. Stone, for the reasons given by the rajah, it will be proper to purchase upon the Company's account what paddy he can collect for them.

Mr. Russell of the same opinion.

Mr. Dawson of the same opinion, with this addition,—and that he may have a right to dispose of.

* "Paddy, rice in the husk." Glossary to the Fifth Report from the Select Committee appointed to enquire into the present state of the affairs of the East India Company; which Report was made, July 28, 1812. Printed by order of the House of Commons.

Sir R. Fletcher of opinion with Mr. Mackay.

The President of opinion that it is quite proper, for the reasons assigned by the rajah, to purchase on the Company's account what grain the rajah may collect, more than he thinks necessary for the consumption of his country.

Sir R. Fletcher informs them he founds his opinion upon the undoubted information he has received, that a great part of the grain of the Tanjore country has been assigned by the nabob to his creditors, some of whom are British subjects.

Read a letter from Mr. Paul Benfield to George Stratton, esq. and the council of Fort St. George, dated 22d April, 1776; representing he had claims on the Tanjore country for money lent to the nabob, and that he had sent a letter to lord Pigot at Tanjore informing him of the same, dated 13th April, 1776, with a postscript that he had acquainted his lordship generally at Madras with the claims he had on the Tanjore country.

The Answer to that letter read, dated 13th April, 1776; stating that he had acted by orders from the Company for the restoration of the rajah of Tanjore; and by those orders he was commanded to assure the rajah, in the Company's name, that they will punish every military officer or Company's servant who shall in any respect interfere with the affairs of his government, but that he would on his return to Madras lay his letter before the council; and,

Mr. Benfield's Reply to lord Pigot, dated 14th of April; stating he cannot conceive his first claim on the Tanjore country interferes with the rajah's government; or that the Court of Directors meant to deprive him of his right, in the execution of their orders; that it would be hurtful to his affairs if the revenues assigned to him should be otherwise applied than paid to his servants in the different countries appointed to receive them.—He shall be ready at any time to lay before them sufficient vouchers.

President moves a copy of Mr. Benfield's letter be transmitted to lord Pigot, and the consideration of it deferred till his return. Mr. Mackay for the motion, provided lord Pigot is informed the grain mortgaged to Benfield be not meddled with by him or the rajah until the Board have come to a determination on it.

Messrs. Palmer, Stone, Russel, and Dawson, for the motion.

Sir R. Fletcher against it.—The president for it.

Letter from the nabob to Mr. Stratton, dated the 21st, received the 22nd of April, 1776; p. 112.

Complaint from the nabob, of lord Pigot's proceedings at Arielore, seizing his dobbeer and some others, with their papers, &c.

24th of April, dispatched the following letter to lord Pigot:—stating they had received his lordship's letters of the 9th and 13th,

†

and transmitting Benfield's letter to them to his lordship, and their opinion on the rajah's offers as given on the 24th.

At a consultation, Monday, 13th May, 1776, p. 115.

Present, The right hon. lord Pigot, governor, president. Messrs. Stratton, Dawson, Russel, Stone, Jourdan; sir R. Fletcher; Messrs. Brooke, Dalrymple, Palmer, Mackay.

Minutes of the last consultation read.

The President, being returned from Tanjore, gives them an account of the execution of his commission, by restoring Tanjore to the rajah; and laying before them a diary with letters and papers, &c.

Att. Gen. My lord, what follows is a very long diary, from the time lord Pigot left the fort till he returned.

Court. Can that be material?

Att. Gen. I will pass it over; unless they have a mind to read any thing out of it.

Mr. Dunning. There is not a passage in it of sufficient importance to give the gentleman the trouble of reading such a long detail. But in that diary there is an account of two circumstances, in which the conduct of lord Pigot in Tanjore was such, as did not merit their approbation; that was the treatment of one Comra, some run away servant of the rajah; and the dobbeer or auditor general of the province: those two circumstances are distinguished, by being excepted out of the approbation of the president and council, upon the return of lord Pigot. I do not know that they are material, it is only to observe those transactions passed during that interval; the nature of them is not very material I believe.—If I recollect right, the transactions were shortly this; one Comra, a Madras dubash,* had intruded himself last night at eleven, and made a noise in some body's house, for which he was ordered to be chabucked; what that is I do not know.

[P. 121, read.—In the morning, complaint having been made, that Comra, a Madras dubash, had intruded himself last night at 11 o'clock when the rajah was gone to sleep, and behaved himself very improperly: gave orders that he should be chabucked upon the parade.]

Att. Gen. It will turn out that Comra was a servant of some body's who had no business there.

[On the 13th, gave captain Tonyn orders to proceed with the troops to Vickerum to escort the dobbeer hither.

Mr. Dunning. I take the dobbeer to be the auditor general, and to have the principal direction of the revenues in the country. [P. 125, received a letter from

* "Dubash—One who speaks two languages, an interpreter: the Hindoo, who, at Madras, manages the money concerns of the European, and serves him as a confidential agent in his private and public transactions with the other natives." Glossary to the Fifth Report, &c.

captain Tonyn, 14th April: that the dobbeer was gone from Vickerum to Arielore, where he intended to follow.]

[P. 15. Received a letter from captain Tonyn at Arielore, that he had taken the dobbeer, and that he would escort him to Tanjore, which he accordingly did this day.]

Court. The nabob complains of this; that makes it material.

[*Mr. Dunning.* But there is one circumstance more to be added to it; Arielore, where he was taken, was in the nabob's dominions.]

Att. Gen. The whole complaint of the seizure of the dobbeer turns out to be false by and by; therefore I desire a moment's suspension of opinion upon it.

[*Mr. Dunning.* This is in lord Pigot's diary (from the officer) of what he, lord Pigot, had done.]

Att. Gen. The matter was examined into afterwards, and captain Tonyn examined; his examination is a part of these papers, which, in the sequel of the business, I will read.

[*Mr. Dunning.* When I stood up, it was for the purpose of shewing lord Pigot's conduct at Tanjore had met, in general, with the approbation of the board; with the exception of two persons, the proceedings in that diary had met with approbation.]

Court. I only observe one thing from it—You have read all these things very correctly, which I wonder at: to be sure it is an ocean of evidence.

[*Mr. Dunning.* It surpasses all my industry.]

Court. I wonder you had time to examine them.

[*Mr. Dunning.* In truth, I had not time sufficient.

P. 148. The board approve of the president's proceedings on his commission to Tanjore.

Mr. Mackay approves of them except the seizing of the dobbeer in the nabob's country, and flogging Comra Dubash upon the parade.]

At a consultation on Thursday, May the 16th, 1776, p. 157, called for—

[*Mr. Dunning.* We desire to have a passage in p. 50 read first, in a letter from the nabob to lord Pigot.]

The beginning of the letter from lord Pigot to the nabob read; dated Fort St. George, 13th May, 1776; stating his lordship wrote it in answer to two letters, which had been sent to Mr. Stratton and the council, complaining of a trouble and uneasiness of mind.

That Narroo Pundit the dobbeer, after Tanjore was taken, refused to act without the rajah's commands as he would not desert him.

Accusing the nabob of ungenerosity in seizing that venerable old public officer between 70 and 80,—the first officer of the Tanjore revenue. That the dobbeer informed

his lordship that the nabob had received 40 lacks of pagodas in 3 years from Tanjore, which was much more than his expences.

The revenue of Tanjore for that year was 12 lacks, and he had left only 3 for the rajah.—The good purpose it had answered, he hoped, was a sufficient reason for escorting the dobbeer to Tanjore.

[Shall the gates of Arielore or any other gates in the Payen Ghaut, be shut against the Company's troops who have fought for you near 30 years, when they ask admittance by my authority? I hope not;—This would be an improper return, &c.]

Letter to Mr. Benfield contained in page 159, laid before the Board at a consultation, upon Thursday the 16th of May, 1776, signed R. J. Sullivan, secretary. To inform him, that on Monday next, the president and council intend taking into consideration his letters, and directing him to prepare what else he has to offer on the subject.

[*Mr. Kenyon*—Turn to p. 155.]

Att. Gen. My lord; I do not object to any evidence they call for, in the course of my evidence, which comes in order of time.—I only observe this is evidence given in defence.

Court. It is better to be taken so for both;—the observation is very right to be made.—I should not have known it otherwise, only by guessing, as Mr. Kenyon called for it.

[Letter from the governor and council of Fort St. George, to the honourable the Court of Directors, dated 14th May, 1776, informing them of the nabob's saying he would never consent to the restoration of Tanjore;—that Tanjore was restored to the rajah, who engaged to pay 400,000 pagodas annually, for the assistance of troops, &c. to the Company.]

At a consultation, p. 160, present—the president lord Pigot, Messrs. Stratton, Russell, Dalrymple, Stone, Palmer, Jourdan, and Mackay.

Sir R. Fletcher, Dawson, and Brooke, indisposed.

Letter produced there from Mr. Benfield, respecting his claims on the Tanjore country.

Stating the grain of the present crop delivered over to him by the circar on account of his claims, had been taken possession of by the Company's seapoys and people of the rajah, dated 6th May, 1776.

Another letter to the same effect from Mr. Benfield, dated 20th May, fo. 161.

Resolved.—These letters lie upon the table for the consideration of a full Board; in the mean time the secretary to call upon him for sufficient vouchers, &c.

At a consultation, Monday, 27th May, 1776.

Present, lord Pigot and all the members of the council.

Minutes of the last consultation read, p. 163.

Letter from Mr. Benfield laid before the

Board—directed to Mr. Secretary Sullivan. That he had not been able to prepare his letter in answer to one of the 23d, but would send it before 10 the next morning, dated 27th May.

The board resolve to meet at 10 the next day to take his claims into consideration.

At a consultation present as before, 28th May, p. 165.

Letter from Mr. Benfield read, dated 28th May 1776; his former letter taken into consideration.

His letter of the 28th states his claims on the souba* of Monagoody, from Feb. 1775 to 17th Nov. in the same year said to be articles.—By the nabob's perwannah† on account of bond debts for advances made by him, B. 369,090 pagodas.

That the perwannahs had been registered by the dobbeer in the cutcherry, and he had an assignment and mortgage of Monagoody subah.

Translation of letter from the nabob to Paul Benfield read—p. 169.

Att. Gen. Your lordship will please to take particular notice of that letter from the nabob to Mr. Benfield, dated 26th May 1776.

Acknowledging the account of the several bonds due from him to Benfield for repairing fort, and paying troops at Tanjore and other purposes, 369,091 pagodas, and the other sums claimed by Benfield amounting to 533,000 pagodas, value 250,000l.

Att. Gen. It is from this letter I state the demand of the items to the amount of 369,000 pagodas, the assignment of the revenues in payment of this demand is dated in November.

[*Mr. Dunning.* The mortgage for the whole debt was proposed in November.]

Att. Gen. The perwannahs have no specific date when the articles were advanced; the other sums are demands upon the inhabitants, as I stated it to the jury.

Court. I attended to you very closely; the resolution was, that his claims were inadmissible; not of a public, but a private nature.

[*Mr. Dunning.* Your lordship will find that was never suggested in India.]

Att. Gen. Your lordship will observe my opening to be correct when we come to the next day's proceedings; what I mentioned it just now for, was to shew you I was correct in classing the claims in the manner I had; and giving you the date, not of the supposed

advance to the nabob, but the actual assignment of the revenues.

Court. I understand you perfectly, it is from your being so correct one is enabled to go along with you; it is from your state of it I speak, and nothing else. That is a point they do not proceed upon at the Board, nor graft the resolution upon—they do not say this is conclusive or a fictitious debt—or that this is a conclusive assurance by the nabob of the money being advanced;—but as you state it—as being inadmissible and a private concern.

[*Mr. Dunning.* Impeaching not the derivative right or title, but the title from whence derived.]

Court. Not acknowledging the title, but going upon that ground.

Att. Gen. The next thing is the Board calling upon Benfield for more particular accounts.—Resolution read for Mr. Benfield to be called upon for more particular accounts of what he had received from the Tanjore country, of the bonds from the inhabitants, and other accounts. Mr. Dalrymple delivered in a minute desiring to have it discussed whether the members of the council were liable to actions as individuals for their conduct in a public capacity in the Tanjore country?

Adjourned till the next day.

Letter sent to Benfield to prepare his accounts.

At a consultation held the 29th of May, present the president and council, as before; p. 173.

Letter from Benfield stating his claims of 524,749 pagodas. The mortgage and assignment of M. 369,090. By nabob's orders on Papanashem, 20,000. By ditto subah of Puttocotah, 15,000. By his claims on the inhabitants for money advanced through the circars, 120,659. Other claims on the country independent of the Circars—no price.

That the records of the cutcherry would prove the 3d article—the 120,659.

That he had not the inhabitants' bonds at Madras; they are in the cutcherry, or in the hands of some of his people to the southward, all of which claims he says are vouched by the nabob.

In answer to that part of Benfield's letter complaining of lord Pigot's conduct in ordering the seapoys to seize his property, president desired the resolution of the 25th of March to be read.

Extracts of minutes of the consultation on the 25th of March 1776, read, the purport of which was—The Company's forces should garrison Tanjore and protect the rajah's country.

Resolution, to send a battalion to the southward to enable the rajah to collect his revenues.

A letter sent to captain Mackenzie, of the 6th battalion, to proceed for that purpose to Mayaveram, &c. dated 13th April, 1776.

Form of an order read—from captain Mac-

* "Subah. A province such as Bengal. A grand division of a country which is again divided into circars, chucklahs, pergunnahs, and villages. Europeans are apt to confound this word with Subahdar, the viceroy or governor of a province."—Glossary to the Fifth Report, &c.

† "Perwannah. A royal patent, or diploma. A written order or commission."—Richardson's Persian Dictionary, by Wilkins.

kenzie to his officers on that detachment to proceed to * and to protect the officers of the rajah of Tanjore in the management of the revenues.

The president desires the opinion of the Board as to the propriety of those orders respecting the resolutions of the council of the 25th of March last, and the powers vested in him by the Board to carry the orders of the Company into execution.

Resolution of the Board the orders were proper.

President moves—Not in the power of the Board to comply with Benfield's requests—that the claims on individuals have no connections with government, and the assignment of the nabob not being admissible.—

Against the question—Messrs. Mackay, Jourdan, Palmer, sir R. Fletcher.

For the question—Messrs. Stone, Dalrymple, Russel, Brooke, Dawson.

Mr. Stratton against it.

The president for the question, with this addition, Benfield has broke through the standing orders of the Company in many instances.

Court. Read the resolution again.

That the rajah of Tanjore being put in the full possession and management of his country by the Company's express orders, it is the opinion of the Board that it is not in their power to comply with Mr. Benfield's requests in any respects; those claims on individuals which bear the appearance of having no connections with government, not being sufficiently explained to enable the Board to form an opinion thereon, and the assignment of the nabob not being admissible.

Carried in the affirmative by 6 to 5.

At a consultation, present lord Pigot, and a full council, dated 3d June 1776.

Letter from Mr. L'Epine enclosing a packet from sir Edward Hughes.

Letter from sir Edward Hughes read in favour of the nabob, p. 182.

Letter from the nabob to sir Edward Hughes, complaining of lord Pigot's conduct, dated June 3d, 1776.

Copy of a translation of a letter from the nabob to lord Pigot, dated 26th May, p. 185, accusing him of taking possession of part of his country.

Letter ordered to be sent to sir E. Hughes, from the Board, replying to the nabob's complaints.

The president lays before the Board another letter from the nabob, dated May the 26th.

Sol. Gen. That is pretty much the same as the other; you need not read it.

At the same consultation Mr. Mackay says, I put my negative to the motion put by the president at the last consultation, because I think the nabob has a right to the government share of the crop in the Tanjore coun-

try, sown in 1775, and reaped in the beginning of 1776.

The general purport of the rest of his reasons was; all assignments of orders given by the nabob at the Tanjore country, as far as his share of this crop would pay, ought to stand good; that the Court of Directors could not give any precise orders respecting that particular, they not being acquainted with the time of harvest; That they never meant individuals and British subjects should be deprived of their property in that country by its being taken from the nabob and given to the rajah; That Benfield's loans do not appear to be contrary to the orders of the Directors; he does not allow the orders of 1710 and 1712 to be in force now; what might be proper then, might not be so now; That lending money in the country at the legal interest of 12 per cent. is no injury to the Company or natives, nor any interference with the country government.

[Mr. Palmer of the same opinion, Mr. Jourdan of the same opinion, sir R. Fletcher of the same opinion—giving additional reasons, and among the rest quoted damages being recovered from Mr. Verelst by the Armenians, for the losses they sustained through his influence in Sujah al Dowlah's country—that he understood Benfield's money to have been actually paid for property purchased, &c.]

Mr. Stratton of the same opinion, giving his reasons—In particular that he thinks the nabob intitled to the present crop, by his having advanced very considerable sums to the inhabitants for the cultivation thereof, in consequence of which he had mortgaged the government share of certain lands to Benfield.]

Mr. Brooke gives in a minute proposing to consider the proceedings of the 29th.

Sol. Gen. They allow the nabob the profits of the crop from the term of the capture to the restoration of the rajah.

Court. When was the capture?

Mr. Smith. In the beginning of September, 1773.

Court. The crop, in September, is over?

[Mr. Dunning. There are three crops there every year; the last crop, which is material to the present question, was the crop usually reaped in March.]

Mr. Rous. By the papers, they reaped in November;—in the intermediate time they took possession of the fort of Tanjore, therefore the nabob reaped the crop sown by the rajah.

Court. I want to understand the times, the two years intervening the capture in September 1773 and this transaction in 1776.

[Mr. Kenyon. The crop was reaped in March 1776; your lordship recollects the proclamation of lord Pigot, declaring the rajah put in possession of Tanjore, was in May 1776, two months after the crop was reaped.]

The Board agree Mr. Brooke's motion be complied with, p. 197.

The Board to meet on Thursday next, to consider the proceedings of the 29th ult.

(Note, Monday was the Board day)

Letter from Benfield to the Board read, dated 3d June 1776.

That he had informed the president of them before he went to Tanjore.

Supposed French or Dutch claims would not be neglected, and hopes they will support him.

Consultation, 6th June, 1776, p. 199.

Present lord Pigot, president.

Mr. Stratton, sir R. Fletcher, Messrs. Dawson, Brooke, Russell, Dalrymple, (Floyer) Stone, Palmer, Jourdan, and Mackay.

Mr. Floyer takes his seat at that Board.

Letter from sir E. Hughes read, admitting that he had received their letter, and had sent a copy of his and the reply received, to the nabob. Dated St. Thorne, 3d June, 1776.

Mr. Benfield's business postponed till Monday next.

At a consultation, present the governor and a full board of council, Monday, June 10, p. 203.

Mr. Floyer presents a minute giving his reasons upon the propriety and necessity of giving his opinion on Mr. Benfield's claim.

Resolved, Mr. Floyer not having been present before at the discussion, that the reconsideration of it be deferred till Thursday next.

[Defendant's Counsel. We wish to read part of a letter from lord Pigot to the council of Bengal, dated 13th June, 1776.

Part of a letter from lord Pigot and the council of Fort St. George to governor Hastings and the council at Fort William.

"We have intelligence that large quantities of military stores have been lately landed at Pondicherry; it is alledged they are for Hyder Ally.

"That 1,200 men have been landed at the islands with stores and ammunition; that a 64 gun ship and a frigate were expected at Pondicherry, with 400 military and many old officers, who served in the last war in India."]

Sol. Gen. Now go to page 230 upon the same consultation.

Mr. Floyer delivered in the following minute, in which he appeals to the board, whether it was proper for him to give a vote in Mr. Benfield's business.

Mr. Floyer's letter taken into consideration.

The board of opinion he ought to vote.

President then moved that the resolution of the council of the 29th inst. do stand confirmed respecting Benfield's claim.

Against the motion—Mackay, Jourdan, Palmer, Floyer, Brooke, sir R. Fletcher, Stratton.

For the motion—Stone, Dalrymple, Russell,

Dawson, and the President. Carried in the negative 7 to 5.

Mr. Dalrymple acquainted the board that sir R. Fletcher and Mr. Mackay having declared they would give an answer to his minute, he would not form any judgment till he had seen their answers.

Mr. Mackay afterwards acquainting the board that he had some questions to move, it is agreed to adjourn till to-morrow morning 10 o'clock, to take the same into consideration.

Court. Gentlemen, you will attend now to what is reading, it begins now to come to a very material part.

At a consultation, present as before, Friday, June the 14th, p. 234.

President moved that the board may come to the following resolution:

That all the claims of Mr. Benfield are private, and not public concerns.

Mr. Mackay observed to the board, That their meeting this morning was in consequence of yesterday's adjournment, to take some motions he had to make into consideration; and therefore thinks, in point of propriety, that his motion should be taken into debate before the resolution, that is now moved by the president, is put to the vote.

Upon which, the president having explained what he thinks the custom of the service, that the business introduced by him be first taken into debate, desires the sentiment of the board upon this question,

Whether the resolution proposed by him, or the motions intended by Mr. Mackay, should be first taken into consideration?

Carried for Mr. Mackay's motion being first put, 7 to 5.

Whereupon, Mr. Mackay moves, That it is the opinion of the Board, that the nabob had a right to the government share of the crop in the Tanjore country, the produce of grain sown during the time it was in his possession; and that any mortgages he may have given on the same, are good.

The President thinks the Board are not competent judges of the matter; as they are entirely relative to the supposed rights of the nabob, he moves that Mr. Mackay's question be not put, as it (p. 236) may tend to the most fatal consequences.

Mr. Mackay for the question being put; Mr. Jourdan for the same.

Mr. Palmer for the same.

Mr. Stone against it.

Mr. Floyer for the question.

Mr. Floyer delivers in a minute, which was so long it was not read.

Mr. Dalrymple against Mackay's motion.

Mr. Russell against the motion.

Mr. Brooke for the motion.

Mr. Dawson against it.

Sir R. Fletcher for it.

Mr. Stratton for it.

President against it.

Carried in the negative, 7 to 5.

Mr. Mackay's question was thereupon put, and carried in the affirmative, 7 to 5.

Mr. Mackay farther moves, that a letter be written to the rajah of Tanjore to inform him of the resolution of the Board, and to recommend him to give Benfield assistance in recovering such debts as appear due to him from the inhabitants, as well as to restore to him the grain of last year, which is said to be forcibly taken from him by the rajah's people.

President moved an amendment to Mr. Mackay's motion—That the nabob be informed of the resolution of the Board, to desire him to send his officers with their accounts into the Tanjore country, that the dobbeer may be enabled to lay before the Board a true state of the nabob's rights to the government share of the crop in the Tanjore country, that the Board may form an opinion how far those mortgages and orders he may have given are good.

Carried against the amendment, 7 to 5.

Mr. Mackay's motion put and carried in the affirmative, 7 to 5.

Mr. Mackay then moved it to be recommended to the rajah to account with Benfield for the government share of grain in the districts assigned to him by the nabob, and said to have been forcibly taken from his people.

Carried in the affirmative, 7 to 5.

President reasons in particular against the motion; because it was directly opposite to the orders received from the Company by the Granville, and because it will authorise Comera the dubash to transact his affairs with the rajah of Tanjore, who had the insolence to propose to the rajah the renting his whole country, and to declare to him that he was supported by seven of the council, and told the rajah that he was not to comply with lord Pigot's advice, but to refuse his assistance.

Ordered by the Board, that Comera be sent for.

President moves his first question, that all the claims of Mr. Benfield are private, and not public concerns.

Mr. Mackay is of opinion that the claims so far as they regard Mr. Benfield are private, but so far as they regard the nabob's assignments to Mr. Benfield, they are public.

Mr. Jourdan, Palmer, Floyer, Brooke, sir R. Fletcher, and Stratton, are of the same opinion.

Mr. Stone, Dalrymple, Russell, Dawson, and the president are of opinion they are of a private nature.

The president acquaints the Board, he intended to have followed the Board in the above motion, with a recommendation this matter might have been referred to the Court of Directors.

Court. What became of the motion? Is not that negatived 7 to 5?

Mr. Serj. Walker. That is said nothing of.

[Mr. Dunning. The next passage shews lord Pigot considered it as negatived; he

says what he meant to have proposed as a farther question.]

The president's intended motion read.

That it appears to this Board that Mr. Benfield's transactions with the country government are contrary to the express orders of the Company, and that any interference therein may raise apprehensions in the rajah of Tanjore, and tend to involve the Company's affairs on this coast; for which reason it is resolved to refer this matter to the honourable Court of Directors.

Att. Gen. It was publicly known at Madras, the Company intended to restore the rajah so early as the beginning 1775.

Court. That will not decide upon the terms one way or the other: to be sure it was notorious.

Att. Gen. It was known by the nabob and the persons there, in the month of May.

Court. Read what it is.

A book produced by Mr. Mitchell.

Sol. Gen. Look at that book. Is that a book of consultations sent from Madras to the East India Company?—It is, sir; in the military department.

What council is it signed by? do you know?

Associate. I will read it. 7th of April, 1775.

At a consultation, present, Alexander Wynch, esq., president. — Messrs. Smith, Brooke, Jourdan, Palmer, Mackay, Dawson, Johnson, page 442, read.

It is well known to the members of this Board, that the report of the disapprobation at home of the conquest of Tanjore has already reached the nabob's ears; and some private letters have gone so far as to say, he will either be compelled to restore the rajah to his country, or to deliver it up to the Company.

[Mr. Dunning. This is no evidence, what general Smith talks of, or any body else present at that Board.]

Court. No, none at all.

Sol. Gen. We shew that Mr. Brooke knew of the intention as being one of that council.

Court. But this does not prove it.

Sol. Gen. They knew there was a rumour of his being restored.

[Mr. Dunning. We shall have no rumours I hope; there are abundance of rumours, all of which cannot be read in a quarter of an hour, all of which cannot be proved, and none of which I hope will be proved.]

At a council held the 17th of April, 1775, Alexander Wynch, esq. president, &c.—p. 502.

Minute of the Board.—If it has reached the nabob's ears, that a report prevails, that he will be required to restore the country to the rajah, or give to the Company the charge of the Fort, it appears the more extraordinary he should think of putting his second son, already charged with the command of his

troops, in the particular charge of it, especially as he is collecting almost all the forces from* and the neighbouring districts.

[Mr. Dunning. It may be a sagacious observation, but what it imports I do not understand; if some report had reached the nabob's ear, he might be acting wisely;—but from this I cannot tell what his wisdom is.]

Court. It is very loose evidence in such a case as this.

P. 531—At a consultation held 1st May, 1775. Present Alexander Wynch, &c. p. 553.

The president informs the Board, that the chief engineer had represented to him, That a man who had served the Company a considerable time, and who understands casting of guns and shot, had been seduced from their service, and is now employed by the nabob at much higher wages than he received here, that the nabob is making a foundery at Tanjore, under the charge of a Mr. F.—† late chaplain to—

Entry at the consultation the 3rd of April, concerning the orders of the rajah about the nabob, was desired to be read again: agreed it be publicly mentioned to the nabob, that the Board cannot but remark the extraordinary conduct of the nabob in collecting his troops near Tanjore at this time, &c. Resolved a letter be prepared to be sent.

Court. That leaves it just where it was; they intended to restore it upon certain conditions, was it mentioned what are these conditions?

[Counsel for Defendant. Go to p. 252, the joint minute, letter C—the third paragraph.

At a consultation, Monday, 17th of June, 1776.

Present as before.

Joint minute delivered in by Mr. Stratton, sir R. Fletcher, Messrs. Brooke, Floyer, Palmer, Jourdan, and Mackay.

Letter C, p. 252.

Stating it had been urged, Benfield's claims were of a private nature, as contrary to the Company's order—and that the interference of this government would alienate the mind of the rajah and Marattas; They reply,

It was necessary to determine, whether the nabob had a right to the crop on the ground? if none, the claims on that were ill founded; if right, it was incumbent upon them to consider of them. That the nabob's possession gave him a right, from the day of capture till its restitution, to the crop sown during that time.

P. 254. That Benfield in 1773 became security to the Dutch for 485,545 pagodas, mentioned by the nabob in his treaty with them.

That the president had reason to believe the nabob would not otherwise have been able to accommodate with the Dutch so soon; Benfield therefore of service to the Company, and the nabob, &c.

P. 255. As alarms and apprehensions have been thrown out, that dangerous consequences may ensue from this step;—We mean only to recommend to the rajah, to see justice done, leaving manner and time to himself, and to go no farther without orders from our superiors.]

Sol. Gen. Now go to the 8th of July, 1776.

[Mr. Dunning. In the same date there are some motions respecting the nabob.

P. 259.—Moved by the president,

That the letter from the nabob to sir E. Hughes was written purposely to create animosity between the members of this government.

Carried for the question by the president's casting vote.]

Court. What makes the difference in the numbers?

[Mr. Dunning. Mr. Brooke voted with lord Pigot in that question; he thinks the letter has some appearance of meaning to create animosity.

President moves; none of the members of the Board visit the nabob or his sons.

Carried for the question, by the president's casting vote.

President moves, it be recommended to the nabob to reside at Arcot, as murders, imprisonments, thefts, happen from his people, while the nabob's people are in the Company's bounds.

Carried against the question, 7 to 5.

At a consultation, Friday, 21st of June. Present, the president and all the council except Mr. Dawson.

Mr. Kenyon. Only read one passage in that, N^o. 3.

The president lays before the Board a letter prepared to go to the Court of Directors.

N^o. 3. Should your honours have received a short letter we wrote you the 14th of May, you will be surprised to find; that the whole of your president's conduct during the time he was at Tanjore, had been disapproved of by a majority of council, &c.

Mr. Dunning. They had in truth approved of them all, with the exception I mentioned some time ago; soon after which, lord Pigot thought fit to send it as a private letter. It was rejected 7 to 4 on account of that supposed misrepresentation, as they conceived at least, of what they were doing.

Resolved, 7 to 4, the letter be not sent.

Mr. Dunning. Go to 301. In that page exists the first proposition about sending any body to Tanjore. Your lordship will find a proposal of sending colonel

* Here the reporter has made some omission, which I have not ventured to supply.

† So in orig.

Stuart there as one; and afterwards somebody else.

At a consultation 25th June, p. 295.

The commander in chief lays before the Board a letter from colonel Stuart, p. 301.

Letter from colonel Stuart read, dated June 22, 1776.

Stating, he thinks Tanjore the most important military post under the presidency.

That the most important military post belonged to him, in the rank he held, in case sir Robert did not occupy it himself, and hopes, through sir Robert's favourable representation to the Board, the usual practice will take place.

Ordered to lie upon the table.

Mr. Dunning. On the 28th of June your lordship will find lord Pigot, for the first time, has an idea of sending a chief and council to Tanjore.

Extract—Fort St. George, general consultation, 28th June, 1776, p. 346, N. 2.

President proposes a chief and council to go to reside at Tanjore. Sir Robert Fletcher proposes the previous question, that that question be now put; which the president will not suffer, he considering it as an innovation upon his right as president.]

Court. Adjourned to when?

Associate. To Monday next, and agreed to.

[Mr. Dunning. The proceedings on the 1st of July are only material as to this, because on that day Mr. Dawson who had leave of absence returns again; the business of that day was adjourned. The explanation is, that as Mr. Dawson's vote was useful or not, he did or not attend.]

Att. Gen. Upon the 1st of July Mr. Dawson does not attend.

Mr. Dunning. Please to see if Mr. Dawson is not there on the 1st of July.

Associate. Mr. Dawson not there the 1st of July.

Att. Gen. Now go to the 8th of July.

Present, at a consultation, lord Pigot and a full board.

President moved the question before, for the appointment of a chief and council at Tanjore, as recommended by him in council the 28th of June, may pass.

Carried in the negative 7 to 5.

Att. Gen. Read in page 357.

The president, after declaring himself for the motion, expresses his concern that he cannot have the concurrence of the Board to carry into execution a measure which he still thinks essentially necessary; at present, he shall acquiesce with the Board till the pleasure of the Directors can be known.

Since the measure recommended by him cannot take place at present, he hopes the Board will not have any objection to the appointment of a resident at Tanjore, and moves for the appointment of Mr. Russel;

Carried for the motion by the president's casting vote.

[Mr. Kenyon. Read page 318, vol. 1.

Sir R. Fletcher desires his motion, entered in the consultation of the 24th instant, for rescinding the resolution of the 17th inst. upon the president's second question about the members of the Board not visiting or receiving messages from the nabob or his sons, may be now taken into consideration.

The president observes, that resolution was grounded upon the minutes given in the minutes preceding that motion.

That it is true he had at the desire of Mr. Brooke given his consent to that reconsideration of Benfield's claims, because that private property was concerned; but there was nothing of that sort in the resolution of the 17th of June.

That the rescinding of it now would increase the difficulties he found in the conduct of the business of the Company with the nabob, therefore he would never give his consent to the question of sir R. Fletcher being put.

That he has always known the business to originate with the president, who is the properest person to lay before them such subjects as may require their consideration.

That making resolutions one day and rescinding them the next, would be productive of bad consequences.

The majority of the Board are of opinion it ought to be put; but the president would not put the question.]

At a consultation, July 9, 1776, present as before.

Minute delivered by Mr. Stratton, sir R. Fletcher, Messrs. Brooke, Floyer, Palmer, Jourdan and Mackay; On Thursday, July 9, 1776. Stating the president having at two former consultations asserted a right to adjourn the council contrary to the opinion of the majority, and refused to put a previous question, though desired by them, and asserted a resolution of the majority cannot be carried into execution without his concurrence;

Such claims are incompatible with our right as members of this government.

We know the government is vested in a majority of the Board, whether the president be of it or not. We know our rights, but hope never to be driven to the painful necessity of exerting them. It will, on this occasion, we hope, suffice that the opinions of the majority of the Board being for rescinding the resolution upon the second motion of the president, on the 17th of June, the same is legally, though not in the usual form rescinded.

Colonel Stuart's letter to the commander in chief, entered in the minutes of the consultation of the 25th, and ordered to lie on the table, now taken into consideration; and after a debate the question moved for the

appointment of col. Stuart to the command at Tanjore;

Carried in the affirmative 7 to 4.

Sol. Gen. He had been appointed to the command at Vellore, 17th of May.

[*Mr. Dunning.* The 30th of July, sir R. Fletcher laid before the Board instructions for col. Stuart's proceedings, left for their consideration, page 352.

In the mean while he has the appointment; and particular orders are sent to hold himself in readiness to go to Tanjore.]

At a consultation, July 12, 1776, present governor and council, except Mr. Russel who was indisposed.

Letter to the governor and council of fort William in Bengal read;

[*Mr. Dunning.* It is nothing more than a simple transmission of all their proceedings, for all the time, upon all the subjects up to that date, which produces an answer which your lordship will hear by and by from the governor and council of Bengal.]

At a consultation, August 19, 1776, present as before except sir R. Fletcher.

Page 356. President moves, that Mr. Russel proceed to Tanjore, if it was only for a few days.

The president declares as a reason why he hoped they would agree to it, that he, the president, had at a former consultation declared he would never give his consent for colonel Stuart going to Tanjore, until the Board should likewise resolve, that Mr. Russel proceed thither according to his appointment.

Carried against Mr. Russel's proceeding to Tanjore 6 to 4.

The president having repeatedly recommended to the Board the propriety, not to say necessity, of Mr. Russel's going to Tanjore; now he declares, he never will give his sanction to any instructions to colonel Stuart until that measure is adopted.

[*Mr. Dunning.* If I understand right, upon the 19th of August, the president a second time moved Mr. Russel's going to Tanjore, which was negatived, and the president now moves it for the third time.

Mr. Floyer then desires the question may be put to the Board, to take into consideration the above draught of instructions to colonel Stuart.

The president declares then, for the reasons he has before assigned, he will not put the question.]

The president having refused to put the question proposed by Mr. Floyer, and it being a matter of the greatest consequence to be determined, whether the president has a right to refuse putting every question proposed:—

And Mr. Stratton moves an adjournment till to-morrow, to consider of it.

Att. Gen. Go to the consultation of the 20th of July, p. 360, vol. 2.

At a consultation, present lord Pigot, and a full Board. Mr. Jourdan informs the Board

he has delivered a minute to the secretary, in which there is a motion respecting the committee of Circuit.

Sol. Gen. We only read that to shew that a motion was made for a Committee of Circuit to proceed upon their enquiry immediately.

[*Mr. Dunning.* Which was carried.]

Att. Gen. This was a motion made by Mr. Jourdan, upon the 29th of July, when he is excused from going on the Committee of Circuit, by a majority of 8 to 3.

At a consultation held on the 29th, Mr. Mackay writes a letter to be excused from going on the Committee of Circuit.

President moves that his request be complied with, which was resolved unanimously.

Court. What use is made of that unanimous excuse?

[*Mr. Dunning.* To obviate the use that is meant to arise from reading that paragraph, I must observe the insinuation is this; that the Board wish to get rid of Mr. Russel, and the president chose to get rid of Mr. Mackay, that he might have a vote left at the time we were like to lose one.

Mr. Kenyon. Go to the proceedings on the 9th of August, p. 419.

At a consultation, 9th of August, 1776, a minute was delivered in by Mr. Stratton, sir R. Fletcher, Messrs. Brooke, Floyer, Palmer, Jourdan, and Mackay, p. 419.

Stating minutes of that kind could not be written at the Board where divisions ran high, and such doctrines had been held forth as they had heard.—

Stating the president had complained the majority put a negative on every measure he had recommended.

That they were always ready to support him when he proposed such measures as they in their consciences could approve;—they had often heard from the president and Mr. Dalrymple, of the council being appointed to assist the president; and they were not surprized to hear the president speak of his particular responsibility; to shew the fatuity of this opinion they would insert the following standing order from England, dated Jan. 3d, 1768:

'Whatever shall be agreed on by the majority shall be esteemed the order by which each one is to act; and accordingly, every individual, even the dissenters themselves, are to perform their parts in the prosecution thereof; and in so doing they do their duty, and are not to be blamed for the event.'

Entry, 9th of March 1702, read of the instructions to Mr. Pitt.

'We do strictly enjoin that all our affairs be transacted in council, and ordered and managed as the majority of the council shall determine, and not otherwise, upon any pretence whatsoever.'

Mr. Dunning. I believe there was a motion renewed, that same day, for sending

Mr. Russel to Tanjore again, that was negatived.

Entry read, page 403.

The President says, he should have thought Mr. Russel ought to go to Tanjore, provided he could be back in time to proceed on the circuit; and moved that he go to Tanjore for a few days.

Negatived by a majority of 6 to 4.]

Att. Gen. Your lordship will observe upon the 29th of July, Mr. Mackay is excused going upon the Committee of Circuit. That request had three objects; one was the Jaghire Land at Madras, which was near—another was the Northern Circars, which was farther off.

Upon the 29th, lord Pigot moves that circuit should be confined to the Jaghire at present; but that motion was negatived.

[*Mr. Dunning.* Those Jaghire Lands, supposed to be so near the town of Madras, extend to a distance of above 60 miles from it.]

Att. Gen. If they do so, it will appear, Mr. Mackay is pleased to intimate, they must begin with the Northern Circars; and for that reason they must begin with the Northern Circars; and for that reason they must begin with the other part of their business.

[*Mr. Dunning.* They may be taken as read.]

Att. Gen. Then, upon the 2d of August, lord Pigot makes a motion that two gentlemen from the distant settlements may be ordered to attend the Board;—that is negatived.

I did not quote them in their order; as they put their civil consultations in one book, and their military in another.

At a consultation, 20th August 1776, Tuesday; p. 357.

President lays before the Board a draught of a letter to the rajah of Tanjore, which is read and approved.

The letter read,

Desiring the rajah to give Benfield all reasonable assistance in recovering such debts as appear to be justly due to him from the inhabitants, as well as to restore to him the grain of last year, which was in the possession of his people, and said to be forcibly taken from them, &c.; dated 20th August, 1776, signed Pigot.

Mr. Mackay delivers in the following minute the same day;

The president refusing to put the question moved yesterday by Mr. Floyer, to take into consideration the instructions to colonel Stuart; Mr. Mackay now moves that the Board proceed upon that business.

President said, he would not allow the matter to be agitated at the board, but has no objections to the members of the board entering minutes for the information of the Company.

The majority of the board approving of the

instructions to colonel Stuart, they are entered.

Mr. Stratton desired the orders of the Company of 3d Jan. 1678, and 9th of March 1702, to be read; which were read accordingly.

Extracts of an Act of Parliament read, to shew that the governor general and council shall be bound and concluded by the opinion and decision of a majority.

Mr. Dalrymple gives in a minute, that the Company's records shew that it never was the idea of the Company in 1678, that a majority of the council was the board without the governor.

Cites the proceedings of 14th Oct. 1690;—Yate, esq. president, and governor, with five of the council: shewing the Company that they had not the power of government without the president: said order of 9th March 1702, was without authority, and only some private order.

Sol. Gen. Read Mr. Mackay's motion, p. 366.

Mr. Mackay. The majority of the board having approved the instructions for colonel Stuart, I am of opinion that the secretary should have them wrote fair, and a letter sent to colonel Harper to deliver up Tanjore to him.

Messrs. Jourdan, Palmer, Floyer, Brooke, Stratton, of the same opinion.

The president said he would not put his name to them, and desired the members would not proceed in it. That without his name they were no act of government, and men executing such orders would be liable to difficulties which he wished them to be as sensible of as himself.

Letter to col. Harper read, ordering him to deliver the command to colonel Stuart.

Mr. Stratton moved the letter be not signed for the present, but the matter deferred till Thursday morning 11 o'clock.

Adjourned till Thursday.

At a Consultation, 22d Aug. 1776, present as before.—P. 368. Minute delivered in by Messrs. Stratton, Brooke, Floyer, Palmer, Jourdan, and Mackay.

Reciting, that the president had refused to put the question on the 19th of August, for taking into consideration the instructions to colonel Stuart; they consider that as being inconsistent with the service; that they adjourned to the next day. Then the president refused it, and said he would not, unless Mr. Russel likewise went to Tanjore.

We deny that the concurrence of the president is necessary to constitute an act of government; and we declare his conduct to be unconstitutional and illegal.

That the president is bound, as much as any other member, to subscribe to the orders of the majority.

We declare, we are of opinion, that in case of the president's refusal to put a question proposed by any member, it shall be the duty of the secretary to put that question, beginning first with the youngest member; and the duty of every member in the council to an-

swer such question; and a refusal is a breach of the standing orders of the Company.—Citing Vansittart's Narrative, vol. 2, p. 133; vol. 3, p. 137.

The president then says, he hopes they will let the matter rest till the pleasure of the Company can be known.

Minutes were then given in by the members Jourdan, Mackay, and Palmer, for carrying into execution the resolution of the council without delay. Messrs. Stratton and Brooke of the same opinion; and that the instructions and letter be signed by the secretary, by order of council, immediately, and sent to col. Stewart. Mr. Floyer of the same opinion. The majority then delivered in a joint minute, to call on the president to direct that the secretary should sign the said letters to col. Stuart and col. Harper; and on his refusal to give such directions, we the majority do look upon ourselves as authorized to order him to do so. Signed by the whole six.

The president, on perusing the minute, declared he would not give such orders; in consequence of which, a letter was wrote to Mr. Secretary Sullivan, directing him to sign the instructions and letter; dated Fort St. George, 22d Aug. 1776;—(Signed) GEO. STRATTON, HEN. BROOKE.

As soon as the letter was signed by the above two names, the president took the same into his possession, and said he would stop the proceeding, and delivered in the following paper: 'I charge George Stratton and Henry Brooke, esqrs. of being guilty of an act subversive of the authority of government, and tending to introduce anarchy, in the signing orders to the secretary to give instructions to colonel Stuart, which were not approved, and passed by the president and council.' Mr. Stratton and Brooke said before the president delivered in the paper, which he will not admit to be a charge, that the president snatched the paper out of Brooke's hand, and prevented the other four members from signing it.

The president recommends Messrs. Stratton and Brooke, being thus charged, may be ordered to withdraw. Jourdan moves, and Mackay seconds the motion; the board adjourn till to-morrow morning 10 o'clock.

The president then moved a resolution, that Messrs. Stratton and Brooke be suspended till the Company's pleasure be known. On casting up the votes, they appeared—four, Mackay, Jourdan, Palmer and Floyer, against it; Stone, Dalrymple, Russell, the president, for it. Carried for the resolution by the president's casting vote.

The other four against the resolution, protest against the proceedings.

The president then adjourned the court till eleven the next day.

22d. Conformably to the resolution of this day's consultation, the following general orders and letter were wrote:

Order of suspension of Stratton and Brooke from the Company's service. Letter to Mr. Stratton informing of the same. Ditto to Brooke. All signed by Mr. Secretary Sullivan.

At a Consultation, 23d Aug. 1776, p. 377. Present, lord Pigot, Messrs. Russel, Dalrymple, Stone, Lathom. The minutes of the last consultation read and approved.

Mr. Lathom takes his seat at the board.

The secretary having, in consequence of the president's orders, issued a summons to Mr. Russel, sir R. Fletcher, Messrs. Dalrymple, Floyer, Stone, Palmer, Lathom, Jourdan, and Mackay, desiring their attendance in council this morning.

The president acquaints the board, that Mr. Bromley, a notary public, had put in his hands, half an hour ago, a paper which he declared to be a protest.

To the right hon. lord Pigot, president, &c. C. Russel, A. Dalrymple, J. M. Stone, esqrs. Council at Fort St. George.

Protest read, dated Madras, 23d August, 1776. Signed Stratton, Fletcher, Brooke, Floyer, Palmer, Jourdan, Mackay, insisting, they the majority consider themselves as the legal representatives of the Company under this presidency.

That the summons for them to attend was evidently illegal, the names of Stratton and Brooke being omitted; therefore they would not attend.—P. 380. Messrs. Stone, Dalrymple, and Russel, deliver in a joint minute, declaring that they do not think lord Pigot snatched the paper from Mr. Brooke at yesterday's council, as recorded by Messrs. Stratton and Brooke.

[At a Consultation, Friday afternoon, 23d Aug. 1776, page 381. Present, lord Pigot, governor, &c. Messrs. Russell, Dalrymple, Stone, and Lathom.

The president acquaints them he had received from Bromley, a notary public, a copy of a protest signed by Mr. Stratton, sir R. Fletcher, Messrs. Brooke, Floyer, Palmer, Jourdan, and Mackay, and that the officer of the main guard and the others in garrison, had received similar copies.

The two secretaries, Oakeley and Sullivan, acquainted his lordship they had received the same.

It appears, sir Edward Hughes and capt. Webb, and others belonging to the ships, had the same.

Bromley being sent for, said he had received the orders at the house of sir R. Fletcher, from the seven who signed it.

The Board of opinion, considering what the others had done, they could not delay, consistent with their duty, suspending Floyer, Palmer, Jourdan and Mackay, from the Company's service, till the Company's pleasure be known. Sir R. Fletcher being a military officer, it is resolved, that he be immediately ordered into arrest, and brought to a court martial, for circulating letters

tending to excite and cause mutiny and desertion among the troops in this garrison, and that colonel Stuart take the command.

The Board are of opinion, from the standing orders and regulations of the Company, the affairs of the government can only be transacted in council, and that council cannot be formed without the president.

Cite the orders of 9th of March, 1702, and the commission of government to lord Pigot and the council.

They vote a letter of suspension be sent to Messrs Floyer, Palmer, Jourdan, and Mackay, which was sent accordingly; dated Fort St. George, 23d Aug. 1776.

An order, signed by the secretary, for putting sir R. Fletcher under arrest, same date.]

At a Consultation, on Friday morning, 23d Aug. 1776. Present, Mr. Stratton, as president. Sir R. Fletcher, Mr. Brooke, C. Floyer, A. Palmer, F. Jourdan, G. Mackay, esqrs. Agreed by us seven members, constituting a majority of the council of Fort St. George, and its dependencies, that the following letter of protest be immediately sent to lord Pigot and to Messrs. Russel, Dalrymple, and Stone, three other members of the council at this presidency.

The protest read:—P. 386: Madras, 23d Aug. 1776. Mr. Bromley, the notary, sent for, and ordered to deliver the letter of protest to lord Pigot, &c.

Letter sent by them to Warren Hastings, esq. governor, &c. and council in Bengal, accusing lord Pigot, and such of the council as were of his opinion, with acting illegally, and defending their own conduct, and enclosing the protest.

At a Consultation, 23d Aug. 1776. Present, George Stratton, esq. sir R. Fletcher, H. Brooke, C. Floyer, A. Palmer, F. Jourdan, and G. Mackay, Friday evening, 23d Aug.

Resolution, That the fort and garrison be in our hands, and under our command, as the legal representatives of the East India Company. We think it our duty to arrest the person of lord Pigot; for which purpose we appoint colonel Stuart, during the indisposition of sir R. Fletcher, to command the army and garrison of Fort St. George. They farther ordered and directed, if he saw it necessary, or that resistance to their orders be made, to arrest lord Pigot, or any other obstructing them, and requite all the Company's servants to give him assistance.

A letter read, sent to the governor and council at Bengal, dated 24th August, 1776. In which they say, amongst other things, they do not admit of any letter or act of lord Pigot and his associates as valid; and two other letters to military officers to obey none but them.

Court. Does it appear at all which was first? Lord Pigot, and the council with him, suspending the four counsellors, and ordering sir Robert Fletcher in arrest? or the major-

ity of the seven giving orders to colonel Stuart to arrest lord Pigot?

Attorney General. My lord; the letter to colonel Stuart is dated 8 o'clock, p. m. or in the afternoon; and it arises upon a fact the president relates to have come to his knowledge while at dinner. The meeting of the council of the majority in that evening again, is subsequent to the meeting of the council that has just been read; but the orders to colonel Stuart are of a date prior.

Mr. Dunning. My lord; it depends altogether upon the accuracy of the clocks, which was first or last.

Att. Gen. They send a protest by Bromley; he took the order at 3 p. m.; lord Pigot sends an order for the council to meet, and goes to dinner; in the afternoon he holds a council, and gives an account of Bromley coming. In the evening again, the other council is held by the seven; they enter, first their own letter to Stuart, and then take notice of what happened in lord Pigot's council.

Mr. Dunning. The terms afternoon and evening are not very intelligible, till one knows the hour of dinner at Bengal or Madras; the dinner time about Bengal is at one or two o'clock, and the afternoon or 3 o'clock are understood as much about the same thing. After dinner means afternoon, that is still more correct than I have occasion to contend for: in short, the proceedings were much about the same time; which was first, and which last, is past any ingenuity in the world to tell; your lordship will take the facts.

Court. What are the three expressions?

Mr. Dunning. My lord; one is afternoon, the next Friday evening, and the other 3 o'clock, p. m.

Att. Gen. One is said to be Friday evening at the beginning, and it dates the order to Col. Stuart at 3 o'clock, p. m.

Court. It is plain lord Pigot's council knew nothing of the orders to arrest him.

Mr. Dunning. Upon the other hand it is equally apparent, the people upon the other side knew as little of the orders to arrest sir Robert Fletcher. The other letter takes no notice of the orders, for suspending and arresting sir Robert Fletcher.

Court. The letter of the 24th states it particularly; the letter of the next day to Bengal.

Mr. Dunning. I presumed your lordship was alluding to the two instruments, one upon their consultation, the other upon our consultation in the afternoon.

Lord Mansfield. I speak of the fact independent of those instruments.

Mr. Dunning. I see in our letter for arresting lord Pigot we take no notice of the suspension of the five members, or the order for arresting sir Robert Fletcher;

That order had not been executed; upon the other hand, they took no notice of this

order for the arrest of lord Pigot, therefore your lordship sees those two transactions may be perfectly coeval for any thing that arises upon the face of them.

Att. Gen. It is taken notice of in their letter, dated the 24th, to the governor and council at Bengal, and entered in their proceedings of the 23rd of August.

Associate. So it is.

Court. That might be sent the next day.

Att. Gen. Your lordship will find in the next consultation, on the 24th, no notice is taken of it. It is a letter dated 24th, but written the 23rd, and approved in the meeting on the 23rd.

Court. See if it is so, that shews they knew this on the 23rd.

Associate. The letter is dated 24th, but entered in the proceedings on the 23rd.

Mr. Dunning. I will save your lordship the trouble of proving that proposition, the fact done proves it sufficiently. In the evening the orders were executed, and sir Robert Fletcher actually put under arrest on the 23rd at night.

Court. That is very material.

Saturday night, half past 9, Aug. 24, 1776. At a consultation, present Geo. Stratton, esq. president, sir R. Fletcher, H. Brooke, C. Floyer, A. Palmer, F. Jourdan, G. Mackay. Entry of their proceedings.

That colonel Stuart had reported to them, in consequence of their orders, he had arrested lord Pigot; that he was at the Mount in arrest.

That all the military officers had declared their resolution to obey their orders.

That they had called all the military officers together, and stated to them an account of the proceedings that had passed between themselves and lord Pigot with the other members of the council; and their reasons for putting his lordship under arrest. The Entry signed by them all, p. 393.

Colonel Stuart represented to the board Mr. Russel, at the main-guard then under arms, was inviting the troops to make resistance to government, &c.

Mr. Russel brought before the board, informed he was suspended.

Letter to major Horne at the Mount.

It having been deemed necessary to arrest lord Pigot, he has been sent to the Mount, where you will be pleased to keep him secured, &c.

We have this evening taken charge of the government, with the concurrence of the whole garrison. Dated 24th Aug. 1776, signed Stratton, &c.

General Order read,

By Geo. Stratton, esq. president, H. Brooke, sir R. Fletcher, &c. Stating, they had arrested lord Pigot, and suspended the other three gentlemen:

That Geo. Stratton, esq. was appointed president, and is to be obeyed as such. Dated 24th Aug. 1776,—10 p. m.

Letter of suspension sent to Claud Russel, esq. same date, signed Stratton, Palmer, Brooke, Jourdan; the same to Mr. Dalrymple; the same to Mr. Stone.

Ordered, letters be dispatched to the subordinate factories, informing them of the general orders.

Attendance of colonel Stuart required at the board, where he delivered in a copy of the orders issued by him to major Horne:

Stating, in consequence of the powers vested in him, he had secured the person of lord Pigot, and put him under the care of captain Lysaght, to be delivered to major Horne. To order major Horne to take lord Pigot into his charge and custody, till he receive farther orders from the legal civil government in and over the presidency of Fort Saint George, &c.

To order his lordship be always kept in view of him, or an officer under his command; not permitted to carry arms, nor correspond or converse upon matters which any way concern civil or military business; letters to be stopped, &c.

To treat lord Pigot with every mark of attention and respect suited to the exigency of affairs.

His lordships' servants to be permitted to attend him; the number limited. These orders, nothing but an order of government is to supersede. Dated 24th August, signed James Stuart, by order of government acting commander of the forces, &c. under the presidency of Fort Saint George.

To major Horne—to be delivered to captain Lysaght, who is ordered to take an acknowledgment in writing from major Horne, that he has received lord Pigot.

Every thing being in tranquillity in the garrison, and it being midnight, it is agreed to adjourn till to morrow 6 o'clock, in the morning.

Att. Gen. Your lordship observes in this consultation all that related to Mr. Claud Russel was known to them; and the letter is sent to major Horne, a common warrant to detain in his custody lord Pigot, who had been put in his custody by colonel Stuart.—Now go on; in the next consultation you will find all the alarms were known, and it produced no other than that common warrant.

At a consultation held on Sunday morning 6 o'clock, the 25th of August, fol. 407.

Resolved, that the following letter be written and dispatched to major Horne, commanding the artillery at the Mount:

Sir, Mr. Claud Russel having last night made attempts to get the main-guard under arms; and, as he and his associates may endeavour to send letters to our out garrisons, we request you would endeavour to prevent their conveying papers to lord Pigot's hand to be signed by him, or their holding correspondence with him whilst he is under your charge, unless in your presence.

As your last resource in any attempt to

rescue lord Pigot, his life must answer for it, and this you are to signify to him. Dated Fort Saint George; signed Stratton and council, 25th August 1776.—P. S. The nabob has been applied to for a party of horse to be put under your command, and they are for the purpose of conveying quick intelligence to us, and for such other purposes as you shall think necessary; we trust to your making such a disposition of the force under your command as to prevent the possibility of a surprise, or the success of any attempt that may be made by lord Pigot and his associates.—Signed, Stratton, &c.

[Mr. Dunning. Let him go to the original papers for those things.]

Mr. Smith. Sir, they are in your possession.

[Mr. Dunning. My instructions are, they are not here.]

Att. Gen. The counsel have all seen these letters and know they are right.

Sol. Gen. Go to the consultation on the 27th of August.

At a consultation 27th Aug. 1776. Present Geo. Stratton, esq. governor, president, H. Brooke, sir R. Fletcher, C. Floyer, A. Palmer, F. Jourdan, G. Mackay: the president acquainted the board he had this morning received intelligence from colonel Stuart, that he had reason to apprehend there was some tampering with the troops at the Mount, by persons in the interest of lord Pigot, and his associates.

The board, after the late attempt of Mr. Claud Russel, and the apprehensions expressed by colonel Stuart, think lord Pigot's residence at the Mount may furnish the ready means of creating disturbances.—The fortress of Chingleput, about 36 miles from Fort St. George, appearing in every respect a more eligible place for lord Pigot's residence, they are of opinion unanimously to remove him from the Mount to Chingleput, as soon as possible.

Resolved the following letters are now wrote;

Letter to colonel Stuart, mentioning the late attempt of Mr. Russel, and the violent disposition of the rest of lord Pigot's associates, the tampering with the military. "They empower him to take any farther measures he may judge necessary for the security of his lordship's person; and desire he will guard against attempts to carry him off." Dated 27th August, 1776.

(Signed) STRATTON, &c.

Letter to major Cooke, appointing him to the command at Chingleput, and ordering him to repair thither and take the command as soon as possible.

Letter to captain Mackerell, to deliver up the charge of the fort to major Cooke.

Court. Is it supposed they meant to do any thing to him at Chingleput? I mean regarding his life.

Att. Gen. Certainly not at Chingleput.

Court. But in going to it?

Att. Gen. I do suppose the communication intended by these letters had a reference to a disturbance that might have arisen by taking away lord Pigot in the night.

Letter to Major Horne, p. 432. That they had intercepted letters, from which they thought there was an intention to tamper with the soldiers of the garrison, &c. in favour of lord Pigot; therefore they had come to a resolution of removing his lordship to a place of more safety without delay, at the same time with every attention to lord Pigot's health and convenience.

That they had empowered colonel Stuart to take the measures he thought proper for conveying his lordship in safety "to the place of his destination."

That the adjutant general will be employed to receive his lordship from the major this night, as soon as it can be done without alarming his lordship's family.

The disposition left in the power of col. Stuart. Dated 27th August, 1776.

P. S. We give you this early notice to prepare for what is to happen this night, but you are not to divulge it to any one.

P. 436. At a Board held Wednesday, 28th August, Stratton, president, &c.

Letter from sir Edward Hughes, dated Mount, 12 at noon; 27th of August, 1776.

To George Stratton, esq. president and governor, &c. Council of Fort St. George.

To inform them that lord Pigot had claimed the protection of the king's flag, and to require that major Horne be ordered to give his lordship safe conduct to my ship, and that he waits there for their orders to arrive, and desires they may be sent to major Horne with all speed.

In consequence of the resolution of yesterday, the board state, general orders had been issued empowering lieutenant colonel Eidington to remove his lordship to Chingleput, a very healthy place; but as sir Edward Hughes made a request that his lordship remain at the Mount, the board consent to it for the present.

Sent a letter to major Horne, dated 28th of August, with a letter for lord Pigot.

Letter to Lord Pigot;

Stating—they are sorry such a notion should have prevailed in his mind that he was to have been removed to Gingee; and assuring him no such idea had, or ever could occur to them.

That they had resolved to make his lordship an offer of removing to any settlement upon the coast where there was a chief and council, if he would pledge his honour to remain quiet within it, until the Company's pleasure be known.

If his lordship consented, they would order the best house in the settlement to be prepared for him, and every necessary to be furnished at the Company's expence; or if he preferred embarking for Europe in one of the

Company's ships, they would order every accommodation, &c.

Letter from sir Edw. Hughes to major Horne read, dated 29 August.

That, as he was obliged to go to the fort immediately, he requested major Horne would give his word of honour that he would not give up the person of lord Pigot till his return.

Court. Are all those letters read tending to ill usage or ill designs upon him in his confinement? these letters from sir Edward Hughes to Mr. Horne can be nothing to the purpose.

Att. Gen. My lord, there is a gap in the business which must be supplied by the parole evidence. Your lordship sees the meaning of this letter to major Horne; there was an attempt made to remove lord Pigot by force; that happened upon the 27th at night; of that your lordship has had no account; we must examine to it. Upon the 28th, lord Pigot claimed the protection of the king's flag, alarmed at what had happened the night before; in consequence of which sir Edward Hughes came to them,—he writes to them on the 28th, and he writes to major Horne what we read, on the 29th; and what we are going to read now, is what passed between sir Edward Hughes and the board when he desired to take lord Pigot away upon this occasion.

[*Mr. Dunning.* Please to read the answer sent by major Horne, importing he had complied with it.]

Att. Gen. If other things are thrown in between these letters it removes the effect.

[*Mr. Dunning.* What I call for now, is the answer sent by major Horne importing he had assented to it; this is called an interruption: I don't conceive I am liable to reproach for having interrupted. When they have read this, they may read the rest of the letters that passed in all the course of their lives if they please.

Letter from major Horne to the Board read, acquainting them of sir Edward Hughes's letter to him and his answer; that he very readily gave him his word of honour as sir Edward desired.]

At a consultation, Tuesday, the 3rd of September, present as before.—Minute.

Before we take sir Edward Hughes's letter of the 28th of August under consideration, agreed that the president requests his attendance at this board to morrow morning; that he may inform us what security he will give this government for the preservation of the public peace, and that the tranquillity of the coast is not endangered by our consenting to the removal of lord Pigot from under our authority.

At a Consultation held the 4th of September, 1776.—Present as before.

Sir Edward Hughes attending, is introduced into the council by the president, and being seated, the affidavits of lieut. col. Eidingtown, and serjeant Shaw, and the commission of government read.

The public conduct of lord Pigot, by facts already published, having subverted the constitution of the Company, and tending to produce anarchy, &c. The necessity of public affairs justifies the steps taken to prevent the farther progress of lord Pigot's arbitrary and illegal proceedings; his lordship's violent temper led them to put such a restraint upon his person; and whoever claims an authority to give protection to his lordship, independent of them, the president, &c. must give satisfactory assurances, they will be answerable that the public peace of the Carnatic will not thereby be disturbed.

Then they put several questions to sir Edw. Hughes, to the same purport.

Will he be answerable to them for the consequences of lord Pigot's going on board the Salisbury with him?

Sir Edward Hughes informs the board he cannot give an answer to any of these questions, until he receives the board's reply to the letter on which these queries are grounded; if they accompany their reply with these queries or any other papers, he will take them into consideration, &c. Sir Edward then withdrew.

Resolved to send a letter to sir E. Hughes;

Letter sent, dated 4th Sept. 1776, stating they had received his letters of the 27th and 28th August, informing them lord Pigot had claimed the protection of the king's flag, and in consequence of that requiring major Horne be ordered to give his lordship safe conduct to his ship.

Then stating what they had before told him in council room—say they cannot give an answer to his letter till he will inform them what security he will give, that the tranquillity of the council be not disturbed by the removal of lord Pigot from under their authority.

At a consultation, Friday, 6th Sept. 1776, present as before.

Read a letter from sir E. Hughes, dated Salisbury, in Madras Road, 5th Sept. 1776; stating, he had received their letter of yesterday's date in answer to his of the 28th of August.

That the requisition of a safe conduct for the noble lord to his ship, being made in the name of the King,—no other answer can be given by him, as being intrusted with the honour and dignity of his majesty's flag, to this requisition, than repeating what he had before required in the King's name, that major Horne be ordered to give lord Pigot safe conduct to this ship, his lordship having repeated his claim of protection from his majesty's flag.

Letter read in answer to sir E. Hughes; Repetition of what they had said before, and add, Since you are pleased to decline giving to us any security whatever in consequence of that request; we cannot, consistently with the important trust reposed in us,

comply with the requisition you have again repeated, that major Horne, &c.

Dated, 6th Sept. 1776, Signed Stratton, &c.

At a consultation, 9th Sept. 1776.

Letter from sir E. Hughes, dated 7th Sept. 1776.

I have just now received your letter of yesterday; and confess I should have been disappointed to have been told that you had any proofs before you, that his majesty had empowered any of his officers to require the removal of any servant of the Company in a similar situation with lord Pigot, from under the authority of the Company's government; as I had believed the case to be unexampled.

You think you cannot, consistently with the important trust reposed in you, comply with the requisition made by me in the name of his majesty;—a name by me deemed very high security, and which I have power to use in national concerns of the utmost importance;—and as I feel in my breast that I have done my duty to his majesty, and to my country, in making the requisition; I have only to add that you have taken on yourselves any and all the ill consequences which may arise from the refusal.

Att. Gen. The next thing to read is, upon the 29th August, a long minute; the effect is this,

That they passed the orders to give to the troops the half batta*.

Court. Do not those circumstances go farther than this? it involves them all in it; that they had taken the whole government upon themselves in every shape in the world, to be sure they would give any thing to secure the troops—they had every thing in their own power.

Att. Gen. Then gave additional pay to the troops.

Court. To be sure that would involve them all; but there are greater lines the jury will attend to. Is there any kind of charge of any intention upon his life?

Mr. Dunning. Not a word. The question his lordship refused to put for the consideration of the Board, was resumed and decided upon that day; and the rest that followed was the upshot of it.

Sol. Gen. My lord, we have done with this kind of evidence.

Edward Dempsey sworn.

Examined by Mr. Solicitor General.

Sol. Gen. Do you know colonel Stuart?—
Yes, Sir.

Have you been at Madras?—*Yes, Sir.*

In whose service were you at Madras?—
Mr. Benfield's.

In what capacity were you?—*I was postilion and coachman.*

Mr. Dunning. I stand up merely for the purpose of shortening the evidence; I

believe every body thinks your lordship would not wish to have so much time taken up in vain, as to hear any thing about whether colonel Stuart ever borrowed Benfield's chaise;—will it affect any enquiries respecting the present transactions? I have not the honour of being col. Stuart's counsel, nor interested with any part of his defence.

Court. Nothing that passed between colonel Stuart and Benfield can affect them.

Sol. Gen. It respects colonel Stuart's imprisonment of lord Pigot, and putting him into the chaise of this man. Your lordship finds under what circumstances he acted; it was under their orders to imprison lord Pigot.

Court. That is established already.

Mr. Dunning. I cannot conceive how it can be said we can be answerable for any thing done by colonel Stuart more than by our orders.—Our orders were executed, that is proved.

Court. I think you cannot—the order has been read; he has executed what was ordered.—What is the sort of thing you want now to prove, Mr. Solicitor?

Sol. Gen. To prove the manner lord Pigot was seized; that he was taken out of his own chaise by personal violence; and in that moment put into the witness's master's chaise, which he drove.

Court. The use of it is, to affect them with this violence?

Sol. Gen. Yes.

Court. Surely not. Where there is such an order, the proceedings must be violent;—they are answerable for every act of it.—You are not going for damages.

Sol. Gen. No, but for the aggravation of the offence.

Court. They will not be answerable for any thing but their own orders; and civilly, for what their agents do.

Sol. Gen. If they authorize him to take such measures, are they not answerable for the measures?—They leave it to the colonel;—they trust to him for the execution of their orders.

Court. They do so.—They leave it to him to do what they think fit.—Let us see what the evidence comes to.

Mr. Dunning. I only desire it may be remembered that my single view and interruption was to shorten the time; I have not an idea that any thing done by colonel Stuart requires to be now justified or defended.

Sol. Gen. How came you to attend there, or to have any concern about this business?

No answer.

Court. Where was it you attended?

Dempsey. In the garrison; August the 18th I went to the garrison along with Mr. Benfield, and I staid there till about 2 o'clock; I returned from the garrison back again to my master's.

Sol. Gen. What were the measures Mr. Stuart took for the security of lord Pigot?—Upon the 18th of August, I returned back

* "Batta—discount, allowance, allowance to troops in the field."—Glossary to Fifth Report, &c.

again to my master's garden-house, upon the same day.

Court. It is impossible to receive this as evidence. This is what Stuart does before he has any orders at all; and you want to affect them with it.

Sol. Gen. He provides the means, before (your lordship sees) he has any orders.

Court. Let this man prove what he will, it is impossible they can be affected with any thing but what he did in consequence of their orders. It is very good evidence against colonel Stuart, in saying you were in this scheme before the dispute arose.

Att. Gen. If we do not connect it with them, it will be matter of observation.

Court. You must not give improper evidence, upon an undertaking to connect it. Their orders were, do what you think fit to arrest him;—it goes no farther.

Sol. Gen. You attended colonel Stuart?—Yes, Sir.

Court. When?—Upon Sunday, the 19th of August.

Sol. Gen. When had you any order to go to any particular place?—Wednesday, the 20th of August.

Mr. Dunning. If you chuse to put the question, the only question proper to be put, is, Whether you had any orders or intercourse subsequent to the orders of the 23d?

Court. Certainly.

Sol. Gen. Do you know any of the defendants, Mr. Stratton, or Brooke, or sir R. Fletcher, or Mr. Mackay?—Yes, your honour, I know them all.

Do you know whether they were acquainted with your master or not?—Yes.

With Mr. Benfield?—Yes.

Court. I dare say they were.

Sol. Gen. Did they use to visit with your master?—Yea, sometimes; I have known them meet.

Do you know whether they were together, any of them, with your master before the time we have been speaking of?—No; I don't know of their being together before.

Do you remember the time of lord Pigot being seized and taken into custody?—Yes.

Did you receive any orders that day, or the day before, relative to attending or waiting, or any thing of that sort?—Yes; I was two or three days in waiting.

That day did you receive any particular orders?—Yes, the 24th of August I received particular orders.

Mr. Dunning. The manner of putting that question, and receiving that answer is improper.

Sol. Gen. Upon his saying I attended that day, I desire to know, whether he attended at any particular place where he was to be of use?—Yes, the 24th of August I had particular orders.

Upon the 24th you had particular orders?—Yes.

From whom did you receive them?—From colonel Stuart.

What were your orders?—To be in readiness by half an hour after five, or six o'clock at farthest.

Where were you to be in readiness?—To receive farther orders.

Were you in readiness?—Yes.

Did you receive any other orders?—No, I did not.

Had no orders to go any where?—Yes, I had orders to go upon the island.

Who gave you those orders?—Col. Stuart.

Did you take any body with you to go there?—I took serjeant Sawyer, your honour, in the chaise; and the blinds were put up.

Was this by colonel Stuart's orders?—Yes.

You went to the island?—Yes, about half after six or seven, as near as I can guess.

Did you stay any time at the island, or see any thing of lord Pigot?—I was there ten minutes, when I saw colonel Eidingtoun and captain Lysaght walking together. Then I saw 18 or 20 seapoys at the carter of my chaise; I was all in amaze to see a guard put over me; serjeant Sawyer said, "If you make any disturbance here, I will shoot you; my orders are to shoot any person that makes it."

That quieted you?—Yes, that quieted me.

Did you see any thing of lord Pigot?—In about twenty minutes, I saw lord Pigot coming in his phaeton, with colonel Stuart in it; and captain Lysaght halloo'd out, "Hallo!" says he, "boy, come out." I came out directly, and mounted my horse. Directly after that, captain Lysaght jumps up to the other chaise, and says, "My lord, you are my prisoner;" and clapt a pistol to his breast; and colonel Eidingtoun goes to his defence with his sword.

Which of the colonels was it that took him?—Captain Lysaght and col. Eidingtoun.

Colonel Eidingtoun drew his sword?—He took his sword in his defence.

What do you mean?—Went upon captain Lysaght's defence.

One went with a pistol, the other with a sword?—Yes; I then heard colonel Stuart say, "My lord, get out of my chaise, you are my prisoner."

Court. There is no doubt of all this.

Where did they place lord Pigot?—I then took my lord in my chaise to the Mount.

Who was in the chaise with him?—Captain Lysaght. I then went to the Mount to major Horne's; he was delivered up. Upon my return upon the road, capt. Lysaght went out of my chaise, I was ordered to return home to my master; and upon the 27th of August, I went to the garrison again, along with my master; and was left under the same charge with col. Stuart which I had with serjeant Sawyer. I returned with the same serjeant.

Where did you go?—I went to the Mount, to bring my lord back again to the garrison.

What time was it when you got there?—As near as I can say, it was between 9 and 10; then I drove the back way through the river; and col. Eidingtoun had several words with me, because I would not go the way he ordered; I said, I did not like to go that way, upon account of my horses being Arabian horses, and very difficult to manage; we drove to the back of major Horne's;—he went into Dr. Story's country house,—there he walked about for 20 minutes with col. Eidingtoun and serjeant Sawyer, till he took an opportunity to go to major Horne's, to fetch my lord; he gave me farther orders to drive to Mr. Horne's;—then, between 3 and 4 in the morning, I was going to the garrison, and I met commodore Hughes; the garrison gates were fast; as near as I can guess, at 4 o'clock, the gates were not open.

Did you wait at the Mount till near that time?—The time I set out from the Mount was about half after 3.

Who ordered you to go from the Mount?—Col. Eidingtoun, I brought him from the garrison; and the commodore was waiting at the gates for their being opened; col. Eidingtoun got out of the carriage, and got into the commodore's coach, and they had a great deal of talk, and I drove into the garrison.

This was upon the 27th?—Yes.

I think I asked you before, if the defendants or any of them were frequently with your master,—either Mr. Stratton, Mr. Brooke, Mr. Floyer, or Mr. Mackay?—Yes; I have seen Mr. Floyer with my master several times.

How long before your going to colonel Stuart's?—About 3 or 4 days before.

Do you know the nabob?—Yes, I do.

Do you know of any of them, going there two days before you were put under the orders of col. Stuart?—I drove my master the 19th of August.

I do not ask after your master, I mean the defendants. Did they go to the nabob's?—No; I never have seen one of them.

Did he visit any of them? or either of his sons?—No; he visited my master.

Court. Have you done with this man's going to the Mount?

Sol. Gen. Yes.

Cross-examined by Mr. Dunning.

Mr. Dunning. Your master had the reputation of keeping the best horses in the settlement?—Yes.

And the best carriages in the settlement?—Yes.

And, in you, the best driver in the settlement?—Yes, your honour, I am.

Now, may be col. Stuart was not at all singular in chusing to be driven in the best chaise, drawn by the best horses, and driven by the best driver in the settlement. Col. Stuart had frequently borrowed this chaise of your master, and so had other

people?—No, he never did but that time he sent it to col. Stuart's.

He had had it frequently?—No; never but that time, while I was with him.

Perhaps col. Stuart at the time had some horses and chaise of his own?—Yes, I believe he had.

Perhaps you can tell whether any thing was the matter with his horses?—No; I cannot tell any thing at all about that.

He did not use your master's, you say, from the time you were with him, till that time?—No.

The Hon. *Edward Monckton* sworn.

Examined by Mr. *Mansfield*.

Mr. Mansfield. Mr. Monckton; you, I believe, Sir, were at Madras at this unfortunate period, when lord Pigot was imprisoned?—I was, Sir.

Do you remember, Sir, whether you happened to go to the Mount, upon the 27th of August, 1776?—I went to the Mount, the morning after lord Pigot was confined; and remained at the Mount the whole time of his confinement.

I wanted to call your attention to what passed in the evening of that day. Do you remember going to the Mount in the evening, or pretty late at night upon the 27th of August; or being there about that time? I believe you had been there, and were in bed when you heard a disturbance?—Upon the 27th of August, in the night, between eleven and twelve o'clock, when I was going to bed, some of lord Pigot's servants came, and called me up, and said, lord Pigot was fighting with the soldiers; and said, there was a chaise with provisions in it, and an armed man behind it in a great cloak; and that they wanted to carry lord Pigot away prisoner to Gingee.

This was between eleven and twelve at night?—Yes.

Upon being so called upon, did you go to the place where lord Pigot was?—I went immediately, Mr. Lathom went up with me, Mr. Dalrymple had got there just before us; I saw lord Pigot standing in the veranda with lieut. Gison upon the guard, standing on the side of him.

What is the veranda?—A kind of portico.

There you saw lord Pigot?—There was col. Eidingtoun and major Horne, standing just in the garden at the foot of the steps below it, and as I entered in.

What do you call the place where they were going to carry him?—The servants told me, they were going to carry him to Gingee; it was only an idea of the servants.

There you saw col. Eidingtoun and major Horne with lord Pigot?—Yes.

You were going to add something to that?—Just as I got into the garden, I heard major Horne say, "my lord, it does not signify; my orders are positive, and I must obey."—Lord Pigot, upon that, asked them where they meant to take him? I made answer, that I

understood they meant to take him to Gingee. Col. Eidingtoun said, "my lord, I am not at liberty to tell you where you are to go, or where I am to take you. Mr. Monckton, I can assure you, it is not to Gingee, but to a place of safety." Just at that time a guard of artillery came into the garden, I imagine about 16 or 18 artillerymen, major Horne had the command of the artillery at the Mount; lord Pigot came down to them immediately, and said, "he had known many of them a long time, that many of them had fought with him, at the siege of Madras; that he would depend upon them, and remain at the Mount with them, or they should take him to the commodore, to demand the protection of the king's flag, or place him in his own fort, where he should know how to act; but that he never would go with that traitor Eidingtoun; a man who, though he acted under a commission he received from him, had stopped him in the night upon the high road, and with a loaded pistol like an assassin." Lord Pigot said a great deal more to this purpose, and Mr. Dalrymple, myself, and Mr. Lathom talked a good deal to the soldiers. Col. Eidingtoun said to the men, "I am sure you know your duty, and you will obey your officer;" he repeated it twice to the men, but the men stood mute and made no answer; and I am convinced from their manner they would have done any thing lord Pigot had desired of them. Major Horne, observing that the artillerymen made no answer, took col. Eidingtoun on one side; where they conferred together a little, and then came back to lord Pigot; and major Horne said, "my lord, if your lordship will promise to remain quiet for to night, till we can get farther orders from the fort, I will be answerable for you to col. Eidingtoun." After this we all went to our own rooms.

Was there any chaise prepared to carry my lord Pigot away at that hour of the night?—I saw a chaise standing at the gate.

Do you know what chaise it was?—No; it was dark, and I was in a hurry to go in; there can be no doubt in the world of its being Benfield's chaise, that is allowed by every body I believe.

Court. Did they take lord Pigot's word that he would be quiet?—I do not know whether lord Pigot made any answer.

Court. He made no answer?—I do not recollect whether lord Pigot made any answer whatever; for he never would come into any kind of terms, or speak of any business whatever to them.

Mr. Dunning. Major Horne said to lord Pigot, "if you will be quiet, I will be answerable to col. Eidingtoun?"—Yes.

Nothing more was said?—No.

Mr. Mansfield. How long did lord Pigot remain at the Mount, from the 27th of August?—He remained at the Mount till the 28th April, 1777; there was always an officer with him wherever he went, and I have seen

the orders; the officers had a written order given from one to the other, he was not to converse with any one but in their presence; and there were two or three artillerymen to guard him.

Then his lordship was kept a constant prisoner, somebody always present with him from the 24th of August, when he was first imprisoned, till the 28th of April?—The officers were always exceedingly exact in being in his presence, for their orders were to be so.

No disturbance was ever created by his friends?—I believe it was generally known to the whole place, that lord Pigot from his first confinement, desired every one of his friends to remain quiet; and not commit any disturbance whatsoever upon any account, or try to raise any party.

Court. He continued at the Mount from the 24th of August, 1776, till the 28th of April, 1777?—Yes.

Court. Was he then set at liberty?—Then the surgeon at the Mount gave him over, and thought he could not live any longer; and Mr. Pasley, the Madras surgeon, then recommended his being taken to the Company's Garden-house.

Mr. Dunning. I do not object to this; but it is hearsay only.

Mr. Mansfield. He was kept a prisoner at the Mount till the 28th of April, and then removed to the Garden-house?—A. He was removed to the Garden-house the 28th of April in the morning: upon the 28th of April in the evening major Horne came to me, and three days after I put upon paper what he said to me that day; sir Edw. Hughes was present at the conversation; that conversation was respecting lord Pigot's being again put into confinement.

Mr. Dunning. I do not object to it from the least apprehension of its having any weight against my clients. I do not mean to say what you give in evidence is not true, but it is not competent to us to hear it.

Court. It is not very material.

Mr. Monckton. There was a guard put over him again; major Horne ordered the guard to be continued over him till the night before his death.

When did he die?—Upon the 11th of May, in the morning.

Mr. Mansfield. You said the officers were constantly with him; in fact, you mean the officer did not constantly attend him, but sometimes suffered him to be alone, or from their immediate presence?—They were always near him; if he was in one room they would stay in another room; that was an indulgence of their own.

You were very frequently with lord Pigot during his confinement, I believe?—Yes; I believe every day constantly, except when he was so ill as not to see company.

You can tell me, whether, during this unfortunate imprisonment, his wish was to raise

a disturbance?—His wish was, and he told me a hundred times over, to keep every thing as quiet as possible; and it was his desire and wish, which he mentioned to all his friends, not to raise any disturbance whatsoever.

Cross-examined by Mr. *Kenyon*.

Mr. *Kenyon*. You were son in law to lord Pigot?—A. Yes.

During the time of lord Pigot's confinement, you had frequent access to him?—Yes.

You saw him frequently?—Yes, Sir.

And all the rest of his relations?—Yes.

He visited you also?—He visited me very little after he had informed me they wanted to kidnap him, and send him on board a ship; I make use of the word kidnap as his own expression.

I ask you whether lord Pigot did not, whenever he chose it, visit you or his other relations, or persons nearly connected with him?—When we were at the Mount, he did.

He came to your house, and you went to his house?—Yes.

Did not he ride out in a chaise?—He never went out in a chaise, excepting one day with major Horne and Mrs. Horne, I believe.

By lord Pigot's servants, you say, an alarm was given. You say he spoke to the soldiers to take him on board the ship or to his fort?—Yes.

He used that sort of language with the soldiers that he persuaded them to be ready to do any thing he bid them?—No, by no means, he used that language to make them desist from acting in what they came about.

He addressed them, to bring the soldiers over to his opinion?—Not at that time; I believe from the time of his being at the Mount, excepting the head officers, he might have had the army at his command from the first day.

Mr. *Mansfield*. You said lord Pigot was permitted to visit you while at the Mount; col. Monckton, what sort of mount is it; is there one house or how many?—A. The distance from major Horne's house to the house where I live at, was between two and three hundred yards.

There lord Pigot was permitted to come?—There lord Pigot was permitted to come.

Was he attended, when he did so, by a guard?—Yes, he was. A day or two after lord Pigot's confinement, I applied to major Horne to get lord Pigot the liberty to live at my house; that they might place as many guards over him as they pleased, but major Horne said he could not allow it.

Was the room where he was confined convenient for him?—By no means; he had only one room to put all his cloaths and every thing in.

Mr. *Dunning*. He was in the best room in major Horne's house?—Yes, I believe it was.

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A room of thirty feet by eighteen, I believe?—Yes.

Att. Gen. I beg to ask a question: as an insinuation was thrown out in the first letter sent home to England by the defendants, of lord Pigot's having received money upon this account, as Mr. Monckton was my lord's executor, I desire that he will give your lordship an account of what he knows upon that head.

Mr. *Dunning*. Does your lordship think such an account competent to this information? Are we under a necessity of pursuing such enquiries here?

Court. There is a strong insinuation in their opening upon your clients.

Mr. *Dunning*. Which insinuations they will support if they please: but your lordship sees the tendency of this question respecting that matter.

Att. Gen. The insinuation upon lord Pigot was very public; when these gentlemen sent word home to the directors containing the first account of the transaction, their concluding paragraph is an insinuation that lord Pigot had taken money for this business. I am ready upon the part of the prosecution to enquire what foundation they have for it; here is Mr. Monckton, lord Pigot's executor, ready to answer any question upon it, and ready to speak upon it. As to the insinuations I have thrown out, I have thrown them out open to be contradicted by Benfield when produced.

Mr. *Dunning*. I shall object to their being answered; I am perfectly ready as my learned friend can be to go out of the cause if your lordship pleases; but I hope the court and jury will think the cause long enough without going out of it.

Mr. *Mansfield*. Mr. Monckton, do you know Mr. Benfield of whom we have heard so much?—Yes, Sir.

When did you see him last?—About seven or eight days ago at the India House.

Have you seen him here to day?—No, I have not.

You have seen him here in court to day?—No, I have not seen him.

Q. To *Dempsey*. When did you see Benfield?—A. About three weeks ago or a month.

Mr. *Mansfield*. I believe some gentlemen in court have seen him within this hour.

Q. Where does he live?—A. Please you my lord, he has took a house just by my master I live with now.

Who is your present master?—Mr. Onslow.

Mr. *Dunning*. Who may be your master?—A. Mr. Onslow.

You have been indicting your master, have not you?—No, Sir, my master was always in my debt.

I believe Mr. Benfield, who has good horses, good drivers, and good carriages, has a good horsewhip?—Yes.

Which he bestowed very handily upon

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your shoulders?—Yes, and I hope I shall have some satisfaction for it.

Att. Gen. My lord; I rest it here. I shall not go into any farther evidence.

For the Defendants.

Mr. Dunning :

Please your lordship, and you gentlemen of the jury, to favour me upon the part of the gentlemen who are the defendants in this case.

I am perfectly conscious of the disadvantage of having to solicit your attention at this hour of the night; after that attention has been so employed in the course of the day;—First, during the two hours which my learned friend upon my left hand called for and engaged your attention,—then, during the seven or eight hours which have been since employed upon the papers which have been read to you, and the few witnesses that have been produced; which must have exhausted, if not distracted your attention from the quantity of matter employed in it as well as from the nature of it;—a great part of which you must have found yourselves unable perfectly to apply to the question you are to decide; if you have found yourselves able, you have much the advantage of me, who profess myself perfectly unable to apply them to it.

Gentlemen; at this hour of the night, and in the state in which I find myself, perfectly exhausted, I shall certainly not trespass unnecessarily, upon a moment of your patience or time; but my duty to my clients requires of me not to pass over any of the points that have been pressed upon your attention, as relative to them, or material for them to answer, or you to advert to. In this cause that has happened in a very considerable degree, which in truth one generally finds the principal difficulty of all causes, and that which has caused all the great length—for this is a cause of length—you have been supposing this to be a cause of attention;—the attendance we have been honoured with to day, is a sufficient proof, from the circumstances and the manner they came here, of stories having been circulated upon the matter before they came here, which pretty well accounts for that attendance;—I apprehend, a great part of those who have been attending to this moment, find themselves perfectly disappointed in what they have attended to hear;—they came here with an impression, and an idea that they should hear a very different charge, and very different evidence, and that they should be possessed of a very different story, from that which they will have to carry away with them, when they leave this place.

Gentlemen; there may be some advantage in bringing the case to that which is the question in it; for that purpose,—to divest it of the circumstances which make no part of it,—it is my duty first to tell you what is

not the question; meaning afterwards to tell you, what is the question.

I shall begin with that which is longest, for the sake of concluding with that which is shortest.

Gentlemen; corruption is no part of the question you are to try; for the information contains no charge, in any part of it, of corruption of any sort in any person whatsoever.

The information contains no charge of conspiracy, or confederacy of any sort whatsoever; no confederacy for the purpose of securing the revenues of Tanjore; because it charges no confederacy, and of course it does not charge any confederacy of that sort; both of which were the subject of much animadversion in the course of the opening.

There is no charge, in the information, upon the defendants, of having been, directly or indirectly, accessory to the murder of lord Pigot.

There is no charge, in the information, of having intended or wished any thing like the assassination of lord Pigot.

There is no charge, in the information, of any undue severity in the confinement of lord Pigot.

There is no charge, no hint, in the information, of any thing respecting Benfield, or his claim; or any thing in the information respecting the nabobs, or any question that concerns them;—both of which necessarily arise from the nature of the dispute.

Of all those circumstances, therefore, I trust you will completely divest your memories and minds; because if any impression has been raised, from any one of these considerations, it is not an impression that ought to be raised; as it is your duty to attend to the simple charges alone, as contained in the information, which are of this sort;—after stating, in point of fact, the several commissions, civil and military, with which lord Pigot and his associates in that government were intrusted in India; after stating, in point of fact, those commissions being accepted, and he going to India in consequence of it;—the present defendants (who, by the way, are described as being council at the time they were called upon by this information to answer for their conduct) did interrupt the said lord Pigot, after he had begun to put in execution the instructions and directions of the Company for restoring the king of Tanjore to the throne of Tanjore; while he was about to have proceeded to secure the said king of Tanjore in the possession and enjoyment of the said territories and revenues of that kingdom, then they interrupted him, obstructed, hindered and prevented him carrying those instructions and directions into execution and effect, and assumed to themselves the government and command of the fort and garrison of Fort St. George; that they arrested and imprisoned lord Pigot, and assumed the government. That is the substance of the information, it contains no

more; in the other counts of it the charges are less; I state the first, for that is the most comprehensive charge that is to be found in the information. You will observe, therefore, that the defendants have not the honour to find they have been associated with either the nabob, or his son, or colonel Stuart, or colonel Eidingtoun, or major Horne, or Mr. Benfield; and of course, for none of those have I at present the honour to stand before you as counsel; any questions, or imputations that rest upon them, it behoves them to resist; or any thing in their conduct that requires explanation, it behoves them to explain; and there is no reason to doubt they will be all perfectly ready and able to do so, when called upon by any body; whether the question concerns them, is not the concern of my present clients.

Having said thus much, as I conceive without apprehending I should be supposed to have mistaken, or misrepresented, or misstated what is not the question, or what is the question; permit me to advert a little to the opening with which this cause began.

Gentlemen; you are told the assault and imprisonment of the governor, is in itself no inconsiderable misdemeanor; but, in the present instance, it is only the *means* of putting the defendants in possession of an ample government, and as ample a revenue.—That to arrest and imprison any body is a misdemeanor, unless the circumstances which occasioned and accompanied it afforded a justification, or at least an excuse, is a proposition I cannot deny;—of course I cannot deny that to arrest and imprison a governor, under some circumstances, affording neither justification nor excuse, is a misdemeanor; the sagacity of that representation seems to consist in the close of it; that the end was worse than the *means*; for the end, was to assume the government consisting of ample dominion, and affording ample revenues. The nature of the government, is not very material for the present question; there is no necessity to go to the extent to enquire how many people were interested in the event, or whether ill or well governed;—it suffices to say, the more persons were interested in its being well governed, the more important is the duty of all interested in that subject, to attend to it;—to prevent any danger if they saw any; and to discharge their respective duties, in their respective situations, according to the best judgment they have who possess it.—Those ample revenues, which from this government were afforded to the present defendants, consist, as it was afterwards explained, in the revenues of the rajahship of Tanjore, which they are supposed to have fixed their attention to secure to themselves, and to be in possession of. As to those or any other emoluments in that government, with respect to the first, the gentlemen know, and therefore should not insinuate the contrary, that the revenues of the rajahship are at this moment

in the hands of the rajah, to whom they were given by lord Pigot; and, under his lordship's permission, in the hands of those by whom taken,—the rajah's officers; and are precisely in the situation in which they stood during that time, as delivered up by the governor and council—in that situation they remain to this hour; and the present defendants, though possessing the government as you have been told, and though suffered to remain in possession of that government a considerable space of time afterwards, did not make use of the means they then had, and did not make use of the means they had long before, of applying those revenues to themselves, or to go one jot in the decision of that question, farther than it was carried by the last resolutions which were read to you.

With respect to any emoluments arising from the government, the only person whose situation, in point of emolument, was changed, was Mr. Stratton; who it is said assumed the title of president, and became as such entitled to emoluments superior in point of size to the rest of the council, those emoluments remaining where they were, Mr. Stratton not having touched one penny of it, as he was determined he would not, till his conduct, and that of every body else impeached upon this, should be enquired into and decided, so that the revenues were out of their reach, though said to be within their power perfectly to lay their hands upon, and to secure to themselves.

Gentlemen; you are told, that in a particular month in 1777, intelligence first reached England that lord Pigot had been dispossessed of his government, and was imprisoned; that in the conveyance of this intelligence, and the manner of stating and relating it, my clients, the defendants, had the advantage of having their own story to tell first; and yet so bad was their story, or they so unskilful in the manner of relating it, that it excited general indignation and produced general detestation. The fact is otherwise; the fact being, that Mr. Dalrymple, whose name you have heard so frequently in the day, contriving to be the first conveyer of intelligence to this country, his letter came on the 17th of the month; and their information did not come till the 30th of the same month of March.

Mr. Dalrymple, and the bearers of their intelligence, together, came over land from Suez, where they were detained some time; Mr. Dalrymple had the precaution to sit down, and write his narrative, and convey it so as to get the start of his adversaries. It is not very material, whether truly stated or not; but in consequence of these erroneous instructions improperly stated, this ill-told story, notwithstanding it is said they had the advantage of being first, is supposed to have made such an impression not only upon bystanders but persons more immediately interested in it, the proprietors of East India stock, that it produced a resolution to restore

lord Pigot; which resolution was soon after controuled by another resolution, to recall all the actors on both sides.

My learned friend omitted another circumstance; there had intervened a change in the direction; what that change was, what party it consisted of, of whom the former direction consisted, or of whom the subsequent direction consisted, I don't know; but I think I do know enough of it, to believe the power of the directors is above all other considerations to be attended to. It was not observed upon.

Lord Mansfield. They did not think proper to read them.

Att. Gen. I am ready to read them, if any observation is to be made upon them.

Mr. Dunning. The fact is, there was a change of directors; both of them formed resolutions upon the subject; of those two resolutions, you and I are at present uninformed, or about the secret history of them. But which would you conceive to be the right resolution, that which was founded upon imperfect intelligence, the result of haste, and which was stated of course to be an imperfect information of a bad story, ill told, or ill stated, which is worse; or that which was the result of better information, of a more deliberate and dispassionate consideration, the result at least of a second attention to the same question, by the same body of proprietors at large of the East India stock? In consequence of that resolution, all the parties that survived came home, and it was a great misfortune, which I believe nobody laments more than my clients, that the noble lord did not come home in person as well as themselves in consequence of that order. It has produced a great deal of calumny upon the transaction of his death; they have been charged in a very different manner from what they have been charged to day; yet the charge of to-day, equally unfounded as it is, has been the subject of discussion elsewhere. However, before these orders reached India, in addition to those two sets of orders, a third set was stated to be sent, which were orders to prosecute those to whom military offences were to be imputed upon the spot; and likewise to prosecute all the subordinate instruments acting under the authority of the defendants. Which of those resolutions sent that order was not told you, and why it was not told you, I don't know; unless for the purpose of inducing you to believe, that the conduct of the defendants, as well as of their civil and military assistants, appeared to the directors and company at home, to be such as rendered them, in the opinion of that company and directors, the objects of punishment. If the learned gentleman meant to convey that insinuation to you, he gives me a right to say, that instead of entertaining those sentiments, the sentiments of the company so entertained and explained by the directors were the reverse of it. I am called upon, and authorized to tell

you, with respect to those military offenders to be punished there; though a military enquiry was sent thither, those who sent it pre-saged so little of its being followed by any disgrace, infamy, ruin, or conviction in consequence of their orders, that it is a part of such orders, if colonel Stuart be acquitted, he shall be instantly restored to all his honours, and to the command of that part of the army in the country: as not being counsel for col. Stuart, his defence not being involved in this case, I state it only in answer to what has been said before of the express orders supposed to be gone out to India. With respect to the orders to prosecute them, there is not upon such orders, nor upon the foot of any such charges, as I know of, any prosecution commenced; but a singular sort of prosecution was commenced there: I did not, from motives of delicacy, put the question to col. Monckton, from whom that prosecution arose. There are relations in life, which lead men to think it their duty, and to make it their duty, to pursue all means which they who should know better have themselves suggested, for the purpose of the prosecution of those, who in their passions they are inclined to think deserve it.

Gentlemen; there were proceedings before the coroner in India, very strange proceedings, that went to I know not what length, before they ended; in fact they ended as such a ridiculous business ought to end, being completely abandoned and laid out of the case, by the people there conducting the courts of law. That prosecution was not all in the contemplation of my learned friend; not directed from Europe; no prosecution from there that I have any knowledge of at all; for all the knowledge of the sentiments of the company here is of the sort I have stated, and I stated my grounds for thinking so, and you will judge whether I am not warranted in differing from my learned friend in the conclusions we draw from those different subjects.—Gentlemen, you are told, besides these orders under which the military are to be disposed of in India, the civil servants of the company are to be disposed of in England; the defendants themselves are now come to England; that the House of Commons have directed the present prosecution; that the House of Commons thought it was proper to direct a prosecution against these defendants, who had derived the principal advantages from the transactions in question. Whether that was among the reasons that induced the House of Commons to direct the prosecution or no, my learned friend may have the means of knowing; I am sure I know of none such; this I do know, it arose upon a complaint (however much it became the quarter it came from) from a very honourable member of that House, who thought himself bound by his relationship to the noble lord to propose there and every where, to have all the proper enquiries made of the whole transaction, in the fullest

extent of it. This is among the fruits, and I am afraid the only fruit of the application, that came from him; but this is so far from irritation or revenge, that like every act of his life, so far as he has given me an opportunity of knowing it, who am not totally unacquainted with his life, it does him honour in the opinion of all men of feeling and humanity. There was something in this subject that required to be explained; some parts fit to be enquired into; his wish was, and he expressed it like a man, to have every part of that subject enquired into: perhaps the honourable member did not know it; but those who did know it, ought to have informed him how very small a part of that object was attainable by the present mode of information; I speak from a belief that the transactions of the nabob were perfectly open to be enquired into; the transactions of Benfield in his relations were perfectly open, and all those combinations were perfectly open to be inquired into; I am apt to believe the honourable member mistaken in conceiving, as he did misconceive upon many parts of it; but he took his information from a quarter not liable to be suspected by him of any intention to mislead him; he took his information from a quarter, upon whom I shall throw no other imputation, than having first misled themselves by the violence of their passions; and having in consequence of that, misled him. So far for the history of the present prosecution, so far as it depends upon the vote of the House of Commons; that the House of Commons voted this prosecution, therefore, will not, ought not, nor can weigh one feather with you, in the consideration of this question. I only need to state to you, to have your assent to it, that instead of proceeding for better information, it is not even in the shape of an indictment preferred by a grand jury; to my shame I must confess, who am an unworthy member, those proceedings in the House of Commons are much more imperfect than those before a grand jury, for they proceeded sometimes with no information at all. If my learned friend had chosen to comprehend me in the motion, I am convinced it would have passed; nobody would have regarded or enquired whether they could have got me out of the scrape or not. There is another place above stairs where they might have wished to have brought it; so may you, I, or my lord, wish for our dinners, but wish in vain. The gentlemen that pass round, and can go in, and out, and get their dinners when they please, take all for granted upon such motions as that, and think all is right; this was the consequence: to that House, much more properly than this place, belongs this sort of enquiry, to which this complaint should have been brought; had I been one of the number of those to take a part on that subject, in that place, I should have taken the part to advise my honourable friend the honourable admiral, if he will permit me to call him so, to call for

the different resolutions, and to insist to take the sense of a house very different from that House: instead of this, there is a prosecution; but for want of something or other, which is not very material to be enquired into, it so happened this was all he got; and this, which he has got, I believe in the result will be as unsatisfactory to him as it would in the beginning of it be to me, standing in his situation.

Gentlemen, having taken this notice, I hope not impertinently, of what was stated in the outset by the learned gentleman upon my left hand, who then proceeded upon a subject respecting the history of former transactions in the Deccan and the Carnatic, which he himself stated to be somewhat aloof and at a distance from the present;—the present is as much aloof and as much at a distance, at least they appear so to me, as the history of the Deucalion flood or the general flood is distant from his history of the Deccan or the Carnatic;—it did not appear to me to be applicable to the subject; his ingenuity will not probably make it appear to you to be applicable to this subject: I only beg leave to state for myself, I don't know that it is applicable. In the progress of that history, he came down to the Tanjore war, which he said was marked with all the disapprobation it deserved, and it was determined immediately to remove the governor, to reprimand the council, to restore the rajah, and undo all that had been done. The extent of that proposition I totally deny. That it was disapproved, or rather the conduct of the governor was so disapproved that he was removed; that the council were to be reprimanded, and that there was an order to restore the rajah, is true. I apprehend those orders cannot be well understood in any other sense, than as expressing that, as what they meant; those three propositions I shall have no quarrel with; but, when the fourth is added, that there was a resolution of the directors to undo all that had been done, that I deny; there is not a tittle of proof, expressive of that idea: there are circumstances in those instructions, which clearly to my understanding convey a different idea from that of undoing all that had been done; perhaps I may as well state in this place, as in any future, what I mean, when I said I deny that 4th proposition was added to the three preceding ones; certain articles in those instructions I desired to be attended to and read, expressed to me as clear as language could express, this idea, You are upon your arrival to take proper measures to restore the rajah; to inform the rajah such was their intention, and you are not to neglect to inform him of it; this he understood, and not misunderstood, to be their intention. This, I am led to suppose, expressed in their instructions their intention was to restore the rajah.—They state a part of the transactions relative to this rajahship, and the conduct of the nabob with respect to it, and the claims of

the nabob of tribute, the justice of which they don't appear to be disposed to question, much less to have enquired into, and investigated; and they state, for reasons expressly in one of those resolutions, they suppose the expences of the former expeditions against Tanjore were more than reimbursed to him; the subsequent expences he found means to reimburse himself, and his particular revenues at the time were more particularly stated, and they state that he must have been a considerable gainer after deducting all his charges incurred in that expedition. Gentlemen, permit me to observe a little upon the manner in which this article, upon their part of the business, is stated to you. It was stated, as if the company spoke in terms of the nabob, as if he had stolen these revenues, and appropriated them to himself; as if they were plunder. Now I will read them to you;—'As the expedition against Tanjore in 1773 was short, being undertaken in the month of August, and concluded in September, we apprehend the revenues of the company could not suffer great diminution by that war; and we must suppose that the plunder of the place and the receipt of the revenues (that is mentioned in contradistinction to the plunder) for more than two years, will have rendered the nabob a very considerable gainer; after defraying all charges incurred by his excellency in the said expedition.' There is not a hint, or wish, upon the part of the company, that lord Pigot, or his council, or any other power upon earth, were to take that account, or enquire into it, or to call for vouchers, or any statement, from the nabob, of any part of those revenues, which, in the article I have been reading, they suppose him to be in the possession of, and with which they suppose him to have reimbursed himself in all his expences; they therefore meant to leave this subject where this article leaves it,—You are to restore the rajah of Tanjore, and restore all the future revenues of the country; but you are to go to no retrospect concerning the accounts of the nabob whilst he was in possession, when you take that possession from him, and restore it to the rajah; we know he has received, and we consider him entitled to receive, all the revenues to that time, which we don't meddle with. Gentlemen, perhaps you had not seen the materiality of that, so far as it goes to the merits of the case; but it is plain from that, the directors did not mean to undo all that had been done; they meant to attend to the interest of both those princes; they meant, as far as they were capable, to cultivate the friendship of both those princes, to avail themselves of future assistance of one of those princes; they had an eye, perhaps, to assistance which might be expected from both, or perhaps they meant to form some future barrier against mischiefs to be apprehended from them.—I am making them a present of abundance of reasons,

without knowing what were their actual reasons. You see clearly this was the line of their conduct; that in future, the kingdom of Tanjore belonging to this rajahship, should belong to the rajah, who some time ago was deposed from it; but that the other part possessor and enjoyer, the nabob, should not be called to any account for any part of the revenues of that country, while he remained in possession;—as that seemed to the company the best way of management.

Gentlemen; you are next told a narrative of what passed abroad; and my learned friend began with my lord Pigot's arrival, who was said, and truly so, to be received with all the respect due to his character and station, and with great respect by all parties.—I am perfectly ready to admit it was due to him from both parties.—You are told, the defendants have been obligated to, and had lived in terms of friendship with him; that some of them were bred up under him, and others were under more recent obligations of a particular sort to him, which were not farther explained. I do not know exactly how that matter stands; I am content to suppose it stands as it is stated;—begging to make my own use of it, by observing it is not unnatural conduct that men so related to the noble lord should become his enemies, but it must be under the influence of something more than a sense of duty to him; what that sense was which was more than, and preferable to, that sense of duty, we are differing about. I say it is that sense of duty every officer upon earth owes to the state. When such duties clash, however painful the discharge of the one may be, there must be a total forgetfulness of all other relations in life: in compliance with that duty, the former appeared to these gentlemen, as it appears to me, to be below all comparison and contrast. You are told to begin with the nabob; as if he had been among the number of the defendants;—that his conduct was of an equivocal sort; no positive refusal upon his part to submit to the pleasure of the Company; but it was a direct refusal, or something tantamount to it; he said he was entitled to the rajahship, but he has no objection to his friends taking possession of his capital, or any thing else that belonged to him; that is only a circumstance mentioned *en passant*. This nabob appears to be of good character,—I have heard of his transactions, and a great deal of good of him; but never heard any ill of him. So long as I have been acquainted with the East India Company, I have had occasion to know it; and I have had occasion to be somewhat interested in their affairs! and I have always heard this nabob's proceedings, having produced the most lasting connections between men and states; and things have been so contrived, and so involved, that the nabob cannot exist without the assistance of the Company, nor the Company without him. That produces not only the language the gen-

tleman said the nabob held; but the sentiments and language in which he expresses himself are perfectly agreeable to the manners of the Asiatics, as well as to the Europeans; and to the Europeans as well as to Asiatics. You are told, however, that without any reason appearing for it, Mr. Mackay, one of the defendants, proposed to seize the nabob's person; of this allegation there is no proof; and if it had been proved, and had really passed in the manner stated, I could only have lamented my client, Mr. Mackay; for whatever becomes of him in the course of this prosecution, I think he should be kept under the care of others, and be cloathed with a strait waistcoat, and under no other care, if he could hold the conduct he is represented to have held. It suffices, therefore, there is no proof of it. Then sir Robert Fletcher is stated, (by the way I am no more counsel for him than for the nabob), not to be embarrassed by any forms, but proposes to march the troops under his command; an emphasis was laid on the word *his*: it was complained that sir R. Fletcher had the command of the troops; how they were to be employed, against whom they were to march, is a matter of perfect indifference to him; if any thing is said of which there is no proof that can warrant it, how it can affect his character, I cannot tell. Lord Pigot, however, declined these offers, it is said, but sent orders to some officers upon the spot to take possession of the town of Tanjore; those orders were obeyed and possession of the town taken; but you are told this was not restoring him to the country, of which the revenues were a principal part.

In my judgment it was restoring him to the country, so far as the country was comprised within the town. If the place to which he was to be restored was the town, in contradistinction to the territory round about it, the restoring him to the town would not be restoring him to the country; but when the period arrived that he was restored to the rajahship, then, in my opinion, he was restored to the country, and restored to every thing according to the orders of the Company sent by the Directors; and though not in possession of the revenues collected at former times, which at that time were supposed to be under the possession of others, he was not to be restored to them. Upon the 25th of March, it was said to be unanimously resolved and agreed, that lord Pigot should proceed to Tanjore to execute the Company's orders; great stress was laid on the terms of those orders: the country was said to have been in a state not admitting any farther delay: that this has been rightly interpreted, to mean that the state of the crop was such as could not be delayed (for if delayed the revenue would be lost that month of March, the date of these orders) was the reason for collecting that crop; I understand so from my clients. This appeared to them among other reasons, why it

was proper to use expedition; that I am ready to admit; but you will recollect what it proves; it proves that my clients were joined in that resolution, they had not supposed themselves at that time, to have any interest relative to any claims which afterwards they conceived themselves were proper to be enquired into, and of which that crop was the subject. If the terms prove any thing, they prove that the whole of this council ~~and were~~ resolved, lord Pigot should set out immediately for Tanjore, the state of the crop not admitting farther delay. If I am intelligible, and you understand me, you must feel the force of the observation. It cannot be denied to me, it was reconcilable to no possible construction, neither is it reconcilable to any possible interpretation, but that they all concurred in this resolution; then at least they were uncorrupted, and had no knowledge of that which was pressed upon you afterwards as a temptation, in order to furnish proof of the reasons of their conduct. This resolution upon the 25th of March is decisive, as it occurs to me, for my clients, and appears to be perfectly useless for those whose arguments I am meeting. It was said, that before lord Pigot set out, he was just told Mr. Benfield had some claims upon the Tanjore country; that Mr. Benfield was perfectly unknown to my lord Pigot; that afterwards the extent of that claim produced as much surprise in his lordship's mind as in the mind of the learned gentleman who stated the transaction to you; who added, with this slight and useless intimation lord Pigot set out for Tanjore, when he came there he found no difficulties, but such as were easily removed. As it is truly stated, there he was surprised to find that this Benfield, who was thought a very inconsiderable man, claimed to be a creditor upon the Tanjore country to the enormous amount of 250,000*l.*; this does not immediately produce much observation upon Mr. Benfield's claims; but he was not contented to be forgotten. You will, upon this occasion, permit me to remind you, that before lord Pigot's return, in the first letter sent to the directors, expressing the forwardness of the state in which the execution of their orders was, and the expectations they then entertained, they would immediately be concluded to their satisfaction; they expressed some apprehensions of some difficulties, upon the score of some claims then so stated, as if they who wrote to the directors at home did think them then as worthy of their attention, as they afterwards appeared to be. In that letter I refer to, they speak in those terms that neither imported they were groundless, or that they were unworthy their attention; I speak of the letter of the 14th of February: on the 5th of May, however, lord Pigot returned; and then, it is said to you, his proceedings were approved of by all, except Mr. Mackay; who, though he had been before for seizing the nabob himself, had had

scruples about what he conceived to be unworthy treatment of a run-away officer of the rajah's. That Mr. Mackay had an inclination to seize the nabob is a subject I have spoken of already, and have done with: that Mr. Mackay was the only person that objected; is perfectly ridiculous, I apprehend, for it appears he had the concurrence of the rest of the defendants; but in the same stile with Mr. Mackay, they in general all concurred in approving his proceedings, with some exceptions to one instance, some to another. There were two instances in particular, affording in the judgment of the different members, exceptions to the general approbation which, with those exceptions, they certainly bestowed upon lord Pigot, after his return from the Tanjore country. Now, this run-away servant of the rajah's, that Mr. Mackay mentioned as having been treated improperly; it seems, this unworthy servant, who is supposed to have received this treatment, was in truth no servant of the rajah's at all; he was, in truth, the *dobbeer*, which is a strange word, but equivalent to the title of auditor general in that country, for the revenues of that country, and belonging to the nabob, not the rajah. When the nabob was in possession, this gentleman was in the possession of the revenues; under his title of *dobbeer*, he is mentioned in the letter afterwards read to you from lord Pigot to the nabob, when lord Pigot, in consequence of some misinformation that had been conveyed to him, was made to believe that the *dobbeer* had ran away from the rajah; and that he laid hold of him when he was running away. You see in what terms he expresses himself to the nabob, who thought he did not deserve them, and complains of the nabob as he had unworthily treated this venerable old man; these are the terms he is spoken of by lord Pigot, which are contrary to the terms he has been spoken of to day. Another person, that appeared to the rest of the council to be improperly treated, was one Comra, a Gentoo merchant, and of one of the principal casts in the country. It requires more knowledge than perhaps the subject I am going to mention to you is worth, to explain how the different casts with regard to religion in that country, can affect their civil fortunes; but so it is, that if a man of this distinction loses his cast, he loses his rank and his estimation of an honest man in that country, until he has gone through certain ceremonies, by way of expiation or ablution, which the priests of that country hold to be material. This man was laid hold on, and whipped upon the public parade, like an ordinary culprit. This was a temporary act, which did not deserve approbation; and they chose to object to that part of lord Pigot's conduct; for it cost the man no less than 3,500*l.* sterling to pay for this expiation, to wash him clean from the pollution of that flogging. It is pretty singular, but they who understand the history and manners of that country will

understand it better than I do, and the truth of it; I believe it to be true, and I only state it to you from the information I have received.

Gentlemen, this having passed, Mr. Benfield is again brought on the carpet, as laying his pretensions before the Board, in hopes they would have the attention paid that he supposed due to his claims. Then my learned friend (if he will permit me so to express myself) runs not upon the subject of Mr. Benfield; for Benfield, says he, was so indifferent a person, his obscurity prevents the possibility of speaking enough upon his history to give you an account or any detail of Benfield; he is a man of so very little origin, and of so very bad a description in other parts of his history, that it puzzles ingenuity and defeats industry upon the subject, to get any other or earlier account of Benfield, than that which he stated to you. Before I take notice of what he stated to you, give me leave to state what might have escaped both my lord and you in the reading, but that Mr. Benfield is supposed to have arrived in India several years before the transactions in question. My attention was called to it, at the time, by a gentleman near me; I speak correctly, though the history chosen to be given you of Benfield is this; that in 1772 he was suspended for refusing to go to Balambanga,—the guilt a man incurs for refusing to go there, is not stated to you. Balambanga is a place where Mr. Dalrymple had conceived the idea of planting a settlement which cost the Company 500,000*l.* before it was abandoned, or it would have cost more; it appeared to him an eligible scheme,—to him, as well as to more persons of his character. I have been accustomed to entertain a very singular respect for him, as he appears to me to be a man as well deserving estimation as any living upon the habitable part of the globe; where Mr. Dalrymple happens to be; his abilities entitle him to the good opinion of the public at large; how far Mr. Dalrymple may be qualified by that, as well as other parts of his conduct to receive your approbation, you will judge from the minutes which have been read to you.

Gentlemen, this inferior situation upon the part of Mr. Benfield, which accounts for his being proposed to go to Balambanga, was stated for the purpose of shewing he could not be interested; but he does not tell you what appeared to be Benfield's situation in 1775 and 1776, at the time these transactions are stated to have happened. But my learned friend, with heartfelt astonishment and surprise, says it is a little astonishing that such a man should have the insolence to pretend, (and if he did pretend, who would believe him?) to be worth 250,000*l.*! A man who had 100*l.* a year in India, by that interest, might make 2 or 3,000*l.*: but my learned friend has heard of persons who were in India in situations at least as obscure, and at least as humble, who have gone to India, and come back

possessed of much larger fortunes than that claimed by Mr. Benfield. If he does not know of such persons, I do. Neither is it necessary to go to India to acquire such fortunes in a short time; is it not the case at home, that in this country we shall find a man in possession of 250,000*l.*, who has been in the possession of a place of 100 or 1,000*l.* a year, that has gained such a fortune in 2, 3, or 5 years? you need not go far from the place where we are, to find people possessed of 250,000*l.* or 500,000*l.* acquired in a very short time, when, according to their appointments, it should seem nothing like it. I do not enquire into the means made use of, how they acquired it; sure I am that something more than knowing what a man possesses, is necessary for me in fairness and candor to impute fraud in the mode of acquiring it; it may be honest or not; something more is necessary for me to decide my opinion upon it at least, as to the means by which he got it. However, recollecting himself, that he had been a little severe in his animadversions upon Mr. Benfield, who was no party in the cause, my learned friend concluded with saying, if I am mistaken upon the part of Mr. Benfield, I hazard nothing; I shall be set right: By whom is he to be set right? not by me, I know nothing about him—by me he cannot be set right: by Mr. Benfield, if he were among the audience, he cannot be set right; for however a man may think himself injured by what he hears here, it is not permitted him here to set it right: my learned friend must suppose himself speaking of a man who was one of the defendants in the cause; and by me he must suppose he might be set right. If he thought so, he was mistaken; I apprehend it is not my duty; I have nothing to do with it; I leave it to Mr. Benfield to judge for himself about what it becomes him to do.

It is next stated, as a ground of imputation upon the claims of Mr. Benfield, that it was known so early as 1775, that Tanjore was to be restored to the rajah; and then the question asked was this, Is it possible to suppose that any man would think it safe to lend money upon the security of a title, the possessor of which was to part with it soon? or is it to be supposed the possessor of such a title would not find difficulties insurmountable in obtaining money, upon the terms of such security? In the first place, with respect to the terms, it is without proof there was such knowledge conveyed to India in May 1775; the attempts to prove it were abortive, and I was not at all surprised when they had read the whole, to find they had proved nothing. The whole of the account is, that the nabob is supposed by somebody, to have heard a report from some other body, which other body nobody knows of, the intention to restore to the rajah his territories, Where he heard it, when, or upon what terms,

and in what manner the limitation and conditions were made upon the part of those reports, that the nabob or the persons with whom he had to do, should rely much upon those reports, remains to be made out; it cannot be made out by arguments; it must be made out by proof to be an absolute certainty, and not only the restoration of Tanjore but the precise terms upon which Tanjore was to be restored. The effect of that communication would not, in the nature of things, prevent these transactions, supposing them all honest. What was the nature of the transaction? It was, that the nabob wanted, and certain other persons wanted money, for the purpose of prosecuting the intended cultivation of that country; the means of repaying the loans they required, were afforded by the crops at that time in possession, and the second crops they were looking forward to: supposing these two crops, which, if I do not mistake the orders of the Company, by the spirit as well as the letter of those orders, were to be left with the nabob, or any body who might have the title, if he had parted with it; what hazard does a man run, who lends his money thus? I lend you money, with the full knowledge your estate is to end two years hence; but I lend it you, for I suppose at the end of that time there will be abundantly more than will pay me. I take an assignment of those rents; am not I completely secure? it is ridiculous, to suppose that it is not a proper security given to the man who lends, by another who borrows, if the nature of it was as I have stated it to be. My learned friend forgets another thing, which is, if any European lends money to the nabob, it is lent upon a security or mortgage in European terms; he remained their debtor, and would still be their debtor, if it was never paid out of the rajahship to him; they had a right to receive it from the rajahship if he was not in a condition to repay it, supposing the transaction a fair one; but, if in a condition, I think he would repay it; it is perfectly clear he ought to do so. It was said Mr. Benfield could produce no proof of the fact; all he offers to prove is, it was registered in the cutcherry, and in the knowledge of the borrower, who admitted it. What better could he propose, circumstanced as he was? what other was possible? the only additional circumstance that was possible, must have been to appeal to those registers, which would have ascertained at once the dates of the transactions.—Why not do that? Because the cutcherry court was kept by that same dobbeer, who was taken away from the possession,—what became of him I do not know, or his papers; those were out of his power to be produced; not being able to produce the immediate instruments themselves, he applied to the nabob about it. It is said, what the nabob says is no proof. Is the nabob a person that ought to be so treated, as a

person who, if so appealed to, would sanctify a falsehood; if called upon, under the sanction of those solemnities, would he hazard telling a wilful falsehood for the purpose of a premeditated fraud? Is there a man, so far as they are acquainted with the circumstances, that can bring any proof to warrant that supposition?

Therefore he offered, so far as appeared to him, and so far as appears to me, a competent proof of the demands. It is said, it was strange proof to offer;—the acknowledgment of the supposed borrower, and the evidence of the supposed deed, signed by that borrower: to combat suspicions of the truth and reality of that transaction, to satisfy those who at that time suspected all was false and fraudulent, I should be glad to be told who were those persons, that expressed those suppositions; from one of the minutes to the other, I see abundance of disputes about the nabob's title, which are either well or ill grounded; but if there is any part of them that expresses these doubts or ideas of falsehood it escaped my attention, and I had the satisfaction to observe just now it had escaped my lord's. I hope I shall not be mistaken from having said so much upon Mr. Benfield, or his claims, as if I felt it of any importance in the cause; I have been trying to discover it, but I feel it is of none; because, whether those proofs did satisfy, where the proof was, or whether it was judged of well or ill, by lawyers, or persons who were ignorant of the forms of law, or orders of law, is a question which makes no part of that you are to decide upon: to some it appeared these claims were inadmissible, to others they ought to be admitted. This, however, is supposed to have been the sense of the whole council, of Benfield's claims, at the time which was then particularly alluded to, upon the 29th of May, when they voted them inadmissible, when, it was said to you, it so appeared to all the council; the evidence of which, I presume, was the vote then passed, which rejected Mr. Benfield's claim. My learned friend had forgot that vote was carried by the casting vote of the president; that the numbers were equal upon the question, and nothing to make a majority but that casting voice, which the president claims. How far that claim is sanctified by the constitution, the evidence has not convinced me, nor satisfied me it is; but whether it is or not, by that casting voice, the measure was carried; notwithstanding which, the very minutes prove it to be the sense of an equal part of the council, that they were admissible.

My learned friend says he cannot conceive by what magic it was, after Mr. Brooke had been so perfectly satisfied of the justice of this claim, upon the 29th of May, he should by the 3d of June have got to a doubt, whether he had not committed some injustice in the vote he had so given. Mr. Brooke speaks for himself; he says he voted with the president

when he understood the question in one sense, and voted against him when he understood it in a different sense; the propriety of that distinction I have nothing to do with, nor the distinction itself; but I think the distinction was not irrational; it was this, when he conceived Mr. Benfield was demanding, and was insisting the Company, or the governor and council, should fight for his claim, and insist upon a submission upon the part of the rajah, then he conceived it right to vote with the president; but when he found all that Mr. Benfield wanted and wished, was a recommendation to the rajah to attend to them, then he conceived it right to vote against the president. I subscribe to what I clearly suppose to be his ideas of right, which he supposed himself to be invested with. I should not forget, before I go from the objection against Mr. Benfield's claims, my learned friend desired you to take notice, upon reading of the letter, that the nabob had given a different date to that transaction; to me it seems that letter and these claims are perfectly reconcileable. If I understand the letter, it imported no more than this; upon a particular day mentioned, he had given a general assignment for the security of some of the debts, the commencement of which don't appear. In point of fact, if they commenced at the time Mr. Benfield shewed they did commence, they were antecedent to any orders given by the Company from England; and whether the letter mentions the exact time or not, I contend them to be perfectly reconcileable.

Then you are told the 6th of June Mr. Floyer arrived; and you had observations made upon his conduct, which, I must take leave to say, do not mean to imply his conduct to have merited reprehension in any degree. Mr. Floyer is supposed to have affected a doubt of voting, not having a real doubt, but making a parade of a doubt which he meant to get rid of by and by; and upon the 13th, his difficulties about voting were diminished, and his objection turns out principally to have been that he had not time to instruct himself in the merits of the question. It does not seem unnatural, or unbecoming a man, to doubt, till he thought he understood the question properly; there are cases where people are in the habit of doing the contrary every day, and voting upon questions they don't understand. I am glad to see a council belonging to the East India Company was not in the habit of doing it. His doubts are supposed to have diminished upon the 13th; then my learned friend expresses a degree of surprise, that he who was ill instructed in the merits of the claim, should vote for rescinding that resolution of the 29th of the preceding month. If he had remained perfectly neuter, the effect of the question would have been precisely the same as if he did vote; that might be his reason for voting at first as he did; for he was uninstructed about the merits

of the question. And if it is insisted and required of a man to vote, I don't know what a man can do better, under those circumstances, than so to vote as to make it in effect just equal to not voting at all. What Mr. Floyer did at first, was not voluntary, as I before stated, it was against his inclination to vote. Different people, it is stated, had different sentiments upon it; he then states, he had no objection to remove their doubts if they desired it; Mr. Dalrymple is of opinion every member present ought to vote, for it was a breach of the Company's orders for a man to be there and not vote; sir Robert Fletcher thinks he ought not to be compelled to vote, for he thinks he ought not to vote; but, as good luck would have it, when the vote came out, it disappointed those who wished to obstruct it. Sir Robert Fletcher, who objected, found he voted for him. But his vote was equal to nothing at all; his vote only made six, seven; six would have been a majority of five, so would seven; nothing but Mr. Floyer's voting with the president, made five equal to six, and the two fives, though equal to one another, would have been overturned by the president's casting vote. Mr. Dalrymple, with great precipitance, says you shall vote. You shall not vote, says sir Robert Fletcher, who perhaps would not have objected if he had known which way he would have voted, nor would Mr. Dalrymple have desired, if he had not expected he would have voted upon the same side he did, when he would have made five, six. Let me speak a little here of what personally concerns the character of Mr. Floyer; I cannot suppose it possible for any man to give you a clearer proof of innocence and impartiality, till that period, at least, when Mr. Floyer is said to be affected with a participation in that measure, which is imputed to be a great crime in these defendants. Mr. Floyer was not in the East Indies in 1776, at the time of the claims, nor when the claim was first decided upon; he was not in India when this was brought under a second consideration; but he popped in, as ill luck would have it, from Europe, just at the conclusion; and being called upon, he gives his vote upon this subject: is it not clear, beyond all question, that Mr. Floyer must stand acquitted of any share in these imputations? it must satisfy every man here of his innocence: then surely I may be warranted in drawing another inference, that the same people giving the same votes may have credit given them; and it is not unreasonable for them to have credit given them for sharing with him in that innocence, which belonged to him; and he can by no means be said to have any share in that guilt, which is only assumed and pretended to belong to them.

Gentlemen, at the next meeting, it was said, it was designedly resolved Mr. Mackay should have pre-audience of the president, merely because Mr. Mackay had given notice of a motion the day before. Is that a correct

representation of that transaction? Here again I appeal to your memory, and my lord's information, upon the subject of the transaction to which this observation applies.

Is it true that Mr. Mackay claimed, or was allowed pre-audience of the president because he had given notice of a motion the day before? The entry proves this: Mr. Mackay had got to the length of making a motion the day before, and the council, upon the consideration of what passed the preceding part of that day before, agreed to adjourn the consideration of Mr. Mackay's motion till the next day; the council were in possession of his motion; and if decency is a term applicable to that case, there is more propriety in saying it was indecent upon the part of the president in thrusting in his motion in preference to one made before him. For any person now to stand up and say to me, you shall go on when I have done, seems not less indecency. The court were in possession of his motion; there was no indecency, then, in dismissing those motions before them, before they attended to any other that by and by might come before them; so thought the majority, and so think I, and so, I apprehend, you think.

Mr. Mackay then makes his motions; upon the first of which the president puts the previous question; that previous question being negatived, Mr. Mackay makes his first motion, that is carried; and so it was with respect to the other motions, the merits of which make no part of the discussion between us; they appeared to Mr. Mackay to be right, and they appeared so to the majority of those to whom the right of judging belonged; they concurred, and concurred by a majority.

After that business was gone through, the president's previous question was heard; I cannot help bearing in memory, when I hear talk of previous questions, there is a great innovation introduced upon the practice of the Company by previous questions.

Lord Pigot's motion that he wished to have made before, was made then, though it was of a sort as fit to be made then, as before; it was to express the sense of that Board, that Mr. Benfield's claims are of a private nature: Mr. Mackay was laughed at by my learned friend, as if he had hit upon a ridiculous expedient, in saying Mr. Benfield's claims are of a private nature, so far as they regard Benfield, but public as they regard the nabob. That ridicule don't strike me; I can conceive, if there was a sum of money due from the nabob to the Company's servants, it was a claim which involved in it a question which concerned a prince of the country, who was the most powerful of any in that part of the Indies;—and whether it was well or ill founded, with respect to him, concerned the very being of the Company; but, with respect to Mr. Benfield as an individual, they were of a private nature, if actually well founded.

When my learned friend had got thus far; says he, I shall pass over the rest that concerns this subject upon account of the tediousness of the detail;—my learned friend will permit me to remind him, that if he had less candour than he has, he might be suspected to have some other meaning for passing it over, than upon account of the tediousness. What he passed over, was the explanation that matter produced, which led me to think it requisite to mention it, for fear their meaning in voting as they did upon those motions, should be misunderstood. Among the things proposed to be passed over, one of them is this: The party who were the present majority in voting for those measures, explaining what they meant, and what not, they state that, for fear of a misconstruction, which they conceived would be the case; they, to obviate and put an end to such misconstructions, tell you what they meant, which was, not to enforce, but recommend Benfield's claims—not to enforce them, at any rate, without an order from the Company. We meant to give Mr. Benfield just the assistance he requires, or a recommendation to the rajah;—if he thought that not sufficient, he could gain more by getting better information, if he thought it a measure of hardship, it was open to him to express his wish that such hardship should not be pressed upon him, till the Company at home were consulted upon it;—but without waiting for that, upon the part of the rajah, our intention is immediately to recommend it to him to take them into consideration, and never enforce them without the sanction and order of the Company.

Here ends the chapter of Benfield.—Upon a much earlier stage of the business, about the 11th or 12th of April, Mr. Benfield wrote to lord Pigot; upon that day, on which the rajah was put in complete possession of his country. Upon the 29th of May the business was resumed; and I take it for granted the basis of lord Pigot's motion was against Mr. Benfield's claims, strictly in the words of it; and you will see whether I am accurate in both the parts upon which I am now observing. The 14th of May, the Board write to the directors, that they had restored the rajah, and that he was put into possession of the whole country his father had in 1762. Upon the 29th of May, the terms of lord Pigot's motion are these: "Resolved, That the rajah of Tanjore being put in the full possession and management of his country by the Company's express orders, it is the opinion of the Board, it is not in their power to comply with Mr. Benfield's requests, in any respect; those claims of individuals, which bear the appearance of having no connections with government, not being sufficiently explained to enable the Board to form an opinion thereon, and the assignment of the nabob not being admissible." Here is the second time, acknowledging under his

signature, his quitting the business of Tanjore—that the business was settled. Upon the 5th of May he returned; and upon the 29th it was so taken for granted as settled, and that was his basis to build upon; and the business I last stated of Benfield's claims were at an end from that moment, as is proved by the minute stating an explanation of it, which bears date the 17th of June. Those circumstances were got rid of, the rajah was restored, and there existed no reason why the rest of the Company's orders should not be carried into execution. The Company's orders were, that the committee which they had appointed of certain persons, of whom Mr. Russel was one, should proceed upon the business of the northern circars, and the Jaghire lands; 'when the business of Tanjore was settled, the committee shall proceed to the Northern Circars;' that is in the letter from the Company, their precise orders upon the subject.

But, says the gentleman, by the terms of those orders, this committee of circuit shall not proceed upon the business of the Northern Circars, till the business of restoring the rajah of Tanjore to his rajahship be settled; nor did any body propose they should proceed upon that business till it was settled, which was subsequent to this date upon which lord Pigot states the business of the rajahship to be completely at an end, and the rajah possessed of all his ancestors were possessed of, and so completely, that any claims upon that country were barred, and we can give no assistance to those claims; then the whole business was determined at that period. This motion is proposed afterwards, to send those gentlemen upon the business on the examination of the Northern Circars. It is stated, that cannot be done yet, that this 'object of the Company's orders was not so important as their first object; that the first object was to restore the rajah to his country and revenues; the second object was to make a something of a territory which, under proper direction and management, might be productive of a vast revenue.' This was naturally therefore the second object to be attended to. At the head of this committee was Mr. Russel, whom the gentlemen proposed to send upon that errand. All they wanted, says the gentleman, was to get rid of Mr. Russel; and Mr. Mackay, who was to have gone, got himself ill. Mr. Russel is a young man in full vigor, possessed in his own, and my mind too, of a competent understanding for the purpose of such a commission; there was no excuse made by him, nor by any body, for him. Mr. Mackay is an old man turned of seventy, apparently infirm, and incapable of going through the fatigues of the journey. Lord Pigot had justice enough to admit of the propriety of Mr. Mackay's claim to be excused, therefore he proposed that he should be excused; to which the whole council *unanimously* consent. I cannot conceive any argu-

ment can be drawn from any thing respecting the situation of Mr. Russel or Mr. Mackay, applicable to the question: whether the measures of the Circars were right or wrong, that circumstance affords abundance of justification of all the former measures. That certainly was a business to be more attended to by Mr. Russel, than the circumstance of leaving his friends in the minority or majority. It seems to have been better worth Mr. Russel's attention than that, especially when one sees whether Mr. Russel was absent or present, it would make but four to three, or five to seven at the utmost, as he was in the minority; which shews the defendants, and those who thought with them, were in the right, and those who opposed them, were so far in the wrong, that the absence of Mr. Russel or Mr. Mackay could make no difference. This brings us to the period when colonel Stuart's letter was taken into consideration. It was said, colonel Stuart was proposed to go to Tanjore, at a time when his interest and Mr. Russel's seemed to be incompatible, and they were not to be intrusted to go with each other; and the idea of sending colonel Stuart to Tanjore, was taken up for the purpose of defeating the idea of sending Mr. Russel to Tanjore, or the purpose of counteracting the sending Mr. Russel to Tanjore.

The dates do not very well correspond with that idea; for on the 22d. of the month, col. Stuart wrote his letter to sir Robert Fletcher, which, on the 25th of the month, sir Robert Fletcher presented to the council, expressing Mr. Stuart's idea of the propriety of removing him from Velore, where he was appointed to command, to Tanjore, where he wished to be appointed to command.

The terms of that letter seem to me not very fairly commented upon, when it is said, that upon the part of col. Stuart he had an improper object in view; he states his reasons, for desiring to leave Velore, and go to Tanjore, which are that, in his opinion, Tanjore was the more important command, that it was the most dangerous, and that there was the most difficulty; he does not express himself in that letter in those terms, but speaks of it as the most important at that crisis, of any under that presidency.—A few days after, at the proceedings of the next committee subsequent to the one where this letter was read, it appeared he meant to allude to what he had heard in some correspondence of an earlier date, in respect to information said to be received upon the coast, that the French had landed a thousand troops, and more were expected; that Hyder Aly, the supposed friend of France, and enemy of this country, was in motion at the head of the Marattas, advancing towards Tanjore to attack the rajah, who was one of the original Gentoo princes of that country: this was the danger Mr. Stuart alluded to; when he speaks of the crisis: therefore he conceived, from

that circumstance, there was a necessity for more troops being employed at Tanjore; he thought that was sufficient knowledge to determine upon which was a post of the most difficulty and importance, he thought that near which the enemy might be placed more dangerous, from the resistance to that enemy, which made it of more difficulty and importance than any thing he could do at Velore. This explanation is agreeable to the sense of his letter, and was the ground of his application. This had passed upon the 25th of June: upon the 28th of June is another entry, which, for the sake of correctness, I called for to be read, though I might have forborne so to have done, if I had been inclined to have taken advantage of my learned friend's statement of it; he supposed the transaction to have been on the 8th of July; it was, in truth, the transaction of the 28th of June. I have stated before, on the 25th of June, was the first intimation at the board, that Mr. Stuart wished to be sent to Tanjore, or sir R. Fletcher wished, or any body else to send him; that letter lay upon the table: three days after that, was the first wish lord Pigot expressed to send any body else to Tanjore; the resolution moved is, that a chief and council may be appointed to be at Tanjore; that Mr. Russel may be that chief; that the rajah has desired it; that it might be the means of opening investments in his country; and the president is of opinion the Company will derive an advantage by it, as it will afford the most eligible means of conveying to the settlement, some part of the surplus which may arise out of the four lacks of pagodas which the rajah was to pay annually: and this motion was, in the upshot of it, adjourned; but previous to that, you will permit me to observe, that sir R. Fletcher moved the previous question upon this motion; which the president refused to put, saying, "previous questions were innovations." It is wonderful that upon the 28th of June, that circumstance should escape the memory of the president; for if that was an innovation, he had introduced an innovation himself; a fortnight before he had put a previous question himself, and for ought appears, he had put the first previous question ever put in that country. That it was an innovation, seems to be, of course, a strange objection to come from the mouth it did. In his abstaining from putting the main question, therefore, in the upshot of the business, that subject was adjourned from that day, to a future day, to the 8th of July; upon the 8th of July this question was again resumed, the motion put and negatived, and reasons were given for that negative; if it were necessary to give those reasons, I could state them; but, I confess, I don't feel them necessary; but, it seems to me as if it should decide that; the majority were of opinion against the measure, it belonged to them to decide it, and unless some person had suggested any thing

to induce you to think they were wrong, it ought to be taken for granted that they were right. The motion was for a president and council to reside at Tanjore; it was said the rajah had desired it; the party, for whom I am of counsel, were informed, the rajah did not desire it; who was best or worst informed, is not a part of this cause sufficient to be enquired into, nor am I able to state it. —They were informed about another thing, in which they are not mistaken. The Company had, in express terms, disclaimed deriving any personal advantage from the revolution at Tanjore; they had, by their orders, pointed out, 'You are to keep a garrison, and get from the country what is sufficient to pay the garrison expences; we do not wish to get a farthing by it, and we will not have it so.'—Lord Pigot proposed to employ the surplus of these four lacks of pagodas, stipulated for, after defraying the expences of the garrison, in investments, however that might be contrary to the terms that entitled the rajah to have an account of the actual expence of the garrison; he was under obligations to make up the sum if it was insufficient, and not to give more than was sufficient; for that belonged to him, and ought not to be the subject for investments for any purpose whatsoever.

This was the nature of their objections; to me they seem to be bottomed in justice, and attention to the orders of the Company; and they are bottomed in good sense and sound discretion. Upon that subject they differed. This was the first mentioning of sending a chief and council to Tanjore; it was moved then, that Mr. Russel should be appointed resident at Tanjore; that was negatived. Then it was afterwards moved, Mr. Russel should set out upon the committee of circuit, and carried; here, then, you will have thought that objection should have dropt; because a negative was put upon the idea of sending him to Tanjore, and the resolution affirmed respecting the propriety of sending him upon the committee of circuit: however, upon the 9th of August, the motion was again renewed that Mr. Russel be permitted to go to Tanjore, the motion again negatived, that Mr. Russel should not go. Then it was again moved, upon the 10th, that Mr. Russel may be permitted to go to Tanjore, for a few days; in the discussion of that motion, there occurs a very singular conversation, and a very extraordinary point is pressed and insisted upon, by the president, which I do not know how to justify. It is this, 'unless you give me your assent to this motion of mine, I will obstruct the execution of your instructions to col. Stuart; which is not a motion of yours, but a resolution of yours. I will not permit col. Stuart to go to Tanjore, unless you permit Mr. Russel to go likewise.' What right had he to qualify the vote which had passed? because *ex voto sic jure* are his only reasons, which remain for

him to explain: however, in this he persisted, and then it was requested he might go for a few days. Was it very unreasonable, upon the part of the defendants, to resist a measure so earnestly pressed as that of sending Mr. Russel there? what was Mr. Russel to do there, for a few days? not for the purpose for which he originally proposed to send him there, but he was to go there, at all events, either with or without a council; it was for some purpose that was to be dispatched within a few days; when that effort was made, I don't mean to say they acted inconsistently in resisting it; the measure being pressed for sending him at all events, for a few days, created in the minds of men who had got to the length of being so heated; a stronger opposition, and they thought it more and more their duty to resist; the reason assigned for sending Mr. Russel there for a few days, was prefaced, by being stated by my learned friend, as perfectly obvious. It is not obvious to me; I have no conjecture what is meant; what would have been the consequence if col. Stuart had gone there and Mr. Russel not? Says my friend, the rajah's spirits would have sunk; whereas if he were assured of protection by a person from the governor, which would shew he was not abandoned, then the rajah's spirits would have risen.—If that assurance was of so much importance to the rajah's spirits, could not that have been done by a letter? could not that explicit assurance be conveyed to him, without sending Mr. Russel to convey it? It was strange to hear it said it was a very obvious one, and that I should not have found it out till I was told; and it was stranger to desire me to assent to it now I am told that this was a necessary measure, the sending Mr. Russel there, to keep up this rajah's spirits, if it was only for a few days.

In order to avoid breaking in upon the story, you are to understand, however, pending these proceedings, of which Mr. Russel was chiefly the object, there were others in which colonel Stuart was chiefly the object, whose inclination was first suggested upon the 25th of June; and upon the 9th of July he got to be appointed, by a majority, to the command of Tanjore; he was immediately informed by a public order, that he must prepare himself to go; upon the 30th of the same month of July, sir R. Fletcher prepared the draft for his conduct, whilst he remained there. Upon the 19th of August, Mr. Floyer moved, that the instructions to col. Stuart might be taken into consideration; and required the president to put the question.

Gentlemen; those instructions were not read; but it was admitted they were liable to no exception; the instructions not being then excepted to, nor now, shews they were suitable to the occasion; though they were changed, and the first instructions being withdrawn, the second were substituted in their place;

neither one nor the other were objected to as improper. They were formed into a question, upon the motion of Mr. Floyer. Upon this motion of Mr. Floyer, the president peremptorily refuses to put the question; and then it is, upon being pressed and reasoned with, he says he will, at no event, put the question, unless they will consent to Mr. Russel's going to Tanjore likewise; this appeared to the company present to be a measure of violence: I don't wonder it should do so; it appears to me, that he had no patience with the question at all: and I think, too much commendation, in my own opinion, cannot be bestowed upon one gentleman for what he did upon that occasion; though none was: it was adjourned, I find, upon the motion of Mr. Stratton, the first named of the defendants, to whom it occurred that a farther altercation upon that subject would then be very disagreeable to the president, whom he thought so grossly in the wrong, and he conceived that nothing more was wanting than for him to cool, to reflect a little, which he thought was necessary to convince him; and they would meet the next day, when they would have an opportunity to consult him again. Upon the next day, they met again; Mr. Floyer repeated the motion of yesterday, that the instructions to colonel Stuart be taken into consideration. Lord Pigot, to their great surprize, declared,—what?—that he would not allow the matter to be agitated! that was a most singular declaration, that one can conceive.—Not allow the matter to be agitated? if one is to understand the import of that, it means, I will not allow the matter to be talked of; say no more; I will hear no more; call another chapter; I will hear no more, upon the subject of sending colonel Stuart to Tanjore; the matter shall be no farther agitated. But I suppose, the noble lord meant no more than this construction which he put upon it; I will not put this question;—do what you can, or dare; I shall put no such question; this is not in the nature of a previous question; though I myself put one previous question, yet I objected to sir R. Fletcher putting a previous question, because it was an innovation.—This was a measure, perfectly competent to the board, for any thing yet stated, to move and put; this was among those objections during the whole time of my being in possession of this office, and for the 10 years together, formerly and during the time of my successors and predecessors, every governor has thought proper to put, and are daily in the habit of putting such questions; but I will not put the question; that is peremptory, and that is pointed.—It was at first supposed, by this declaration, that he would not suffer this business to be agitated, and would even preclude them from entering minutes of what passed the day before; but his lordship said, if they meant to make minutes of what was done the day before, they might do it; but if they meant any thing more, the question should not be

put. Of course it was not carried, and with this declaration he concluded.

It occurred to the company present, to think of some means,—without departing from what they took to be their clear right, and the rights of the Company, and the constitution of the Company, and without giving way to what they insist was totally unfounded,—and they took a middle measure: says Mr. Floyer, I will collect the sentiments of the several members of the Board, for their coming to a decision upon it; and he finds 6 to 4 were for the orders to colonel Stuart;—there was, in short, a clear majority in favour of the orders.—Then, says he, I think of another thing, which is, we will all sign our approbation of those orders; they did do so; so that the sense of the majority, which could not be easily mistaken after what I have stated, was then entered, by the actual signature of those that approved; those that did not approve did not interfere in it, but it was in the proportion of 6 to 4;—then they thought it was at rest. No, says the president, this will not do neither: though you, the majority, have signed your approbation of these orders, I mean not to sign them; and says, they are not valid without him; he says, they are only the opinion of a majority; and says, I have now a new doctrine to come out with; which is this, No act of the majority is an act of the government, unless it has my concurrence, as president, and my name to it. This is gravely to be insisted upon, that a majority, whose sense is taken upon every question, amounts to nothing; that every question which should always be decided according to their sense, shall be nevertheless so perfectly nugatory and ridiculous, that they shall be productive of no one act in the world; and all the world are at liberty to disregard it, because he, the governor, did not happen to make a part of that majority.

Gentlemen, you see the gradual advance of these claims; they go step by step; the first is untenable, the second is more so, the third is so preposterous, I don't know how to state it. To this state they got, and the passions of the company were a little inflamed;—here again, I desire, upon the part of Mr. Stratton, it may be recollected, he concluded before, by the by, with a second motion to adjourn; when, instead of moving to adjourn to the next day, he moved to adjourn to the 22d, that two days might intervene between the heat of this council, and the hopes of the next council, and what was to follow from others; upon the 22d, after delivering in their minutes denying the president's concurrence being necessary to an act of government, and citing, by the way, what appeared to them to be good authorities for the purpose; whether they are so, or no, they were the practice in other instances. A Mr. Vansittart, than whom nobody was supposed to have more abilities in those affairs,—and that was likewise the practice of Mr. Cartier, who succeeded

him, who no less than he understood the interest, rules, and practice of the Company,—Mr. Vansittart signed instructions which he disapproved, because he thought himself bound so to do, agreeable to the sense of a majority. This appears to strengthen their argument; their argument appears to stand in need of no such strengthening, for it stands upon its own bottom, and is perfectly irrefutable.—The business was not then suffered to pass, any more than upon the 19th or 20th; but a curious device had suggested itself, as the means to be taken to put an end to the whole business in a very short and peremptory way indeed. Mr. Dalrymple,—to use the authority of his name, and the information taken from the papers which I understand to be his, and which I trust it is, at least as competent to appeal to, as those publications he has stated them to come from,—taking to himself a due share of the merit of the correspondence, he says; During this interval we were not idle; I will have you to understand, we contrived for all possible events, we were at a loss what to do; it occurred to us to arrest sir Robert Fletcher, and try him upon some charge of a military offence;—it occurred to us again, there might be a doubt how that could be effected, for a majority must concur in a warrant for a court martial; and as the majority could not, this measure might be ineffectual, and the troops perhaps might take a part with the commander in chief: we might find it a difficulty. It occurred to them afterwards, they might do,—what? What they did afterwards; that was, direct the secretary how to act respecting the majority. But, says he, we were a little puzzled; we hoped, indeed, they would order the secretary to sign it, if so, he must have read it, and possibly they might order him to sign it, in the name of the president and council. If so, they would prevent it. Mr. Dalrymple, I dare say, could explain that contrivance; I don't attempt it; but, with a view to these cases, and other possible cases that might occur, the president was to be armed with preconstructed and previously prepared motions. I am speaking from information of a pamphlet that comes from a quarter in the knowledge of those, who know whether it is so or not, and will contradict me if it is not so. I am now stating from the authority of the consultations themselves, that have been read to you, that a paper previously written was produced upon the occasion; that was the foundation of subsequent proceedings.—I must say a word, however, upon the proceedings prior to the production of that paper: it occurred to lord Pigot, upon declaring his determined objection to the doctrine laid down by those gentlemen, that they might make a proposal, likewise, to direct the secretary to sign the order as the order of council:—in fact it was hinted, and in point of direction to the secretary, he was sent to, and told if required to sign an order that he

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should be justified in obeying if he chose to obey so singular an order as an order by the council, the president declaring his disapprobation, and declaring that without his concurrence it was no act of government, therefore it might be proper to send these orders to the secretary;—the thought was no sooner suggested, but it was given way to; and the gentlemen, with the suspicions and frights natural to men, who had two days before ineffectually endeavoured to put an end to those heats, and to avoid those difficulties, thought it right, as it occurred to them there could be no objection, to give an order to the secretary, under their hands, for him to sign that proceeding, as in the name and by the orders of the council; they all declared it was their intention to do so; they all concurred in the act of doing so. But, when they came to make the signature, which began in an inverse order, when they gave their votes, it was properly suggested, to have the juniors sign first, as they gave their votes. Upon that, when it was signed by all the majority, as a minute of their opinion, to direct the secretary to sign the orders, and to send them to col. Stuart; the letter was drawn up to the secretary, agreeable to that resolution:—the president declaring he would not give such orders to the secretary. It was first signed by Mr. Stratton as senior, next by Mr. Brooke, then in the hand of Mr. Brooke, to be handed according to the different rights of those upon the spot; to sign it, lord Pigot takes the order, and put it in his pocket. There was some dispute about the manner, whether he snatched it, or took it; that is a distinction without a difference. Having got it; now, says he, I will pluck out another paper; which paper contains a written charge against you two first signers; you, George Stratton, and you, Henry Brooke—In signing this, you have been guilty of a breach of your duty, and contempt of the Company's orders.—I don't repeat the terms of the charge exactly. You have been guilty of something, for which I mean to suspend you. This charge, which Mr. Dalrymple received with so much surprise, put the gentlemen all in confusion and disorder; they had not sense enough to know whether they were upon their heads or their heels; so little sense had they, that they voted a suspension in effect, which, if they had been in their senses, they would have refused to do,—what does Mr. Dalrymple say about the measure of adjournment? I shall remind you of that: it was a measure of his, and his word may be taken. I dare say he speaks very correctly, there is no doubt of his veracity in it,—We had been previously prepared for it; we supposed that would be the measure taken; and then this written charge passed by word of mouth, *ore tenus*, which was in a minute before;—this charge surprised them, and, in that surprise, they lost some advantage which might have been taken, they say; but I say, no; whether taken by surprise or

not, men not passionate, not intemperate, not violent, who came there with an inclination to be cool, who continued there with an inclination of remaining cool, were prepared for all events properly,—how were they prepared?—The president produces this strange charge, under strange circumstances: they were so prepared that two of them moved for an adjournment of the business. That question for the adjournment was put before any other question; that motion for adjournment supersedes everything; but the moment that was put and seconded, no farther notice was taken of it; but the president, in the middle, puts a most important question for their discussion, and that question must be first put; but, in point of fact, it was obtruded in a way in which it was not regular. It was the first motion proposed, before lord Pigot had recovered from his own surprise; and it is something rather extraordinary, the gentlemen should be surprised at the success of what they moved. Lord Pigot puts the question, whether these gentlemen shall be or not suspended upon the ground of that charge? If the motion of adjournment had been put, it would of course have put an end to that suspension. If therefore the formality of putting the question of suspension, had been gone through, it would have been put subsequent to the period which must have prevented it, by putting the question of adjournment first: I beg leave to say the question of suspension is put by those who had no authority, and it was perfectly nugatory; and those gentlemen left the council that day, as full and entirely members of that board, as when they came into it in the morning.

That their conduct was not such as warranted the charge, is clear; and that they claimed a right, if any was claimed, equally with all the rest of their associates. If any purpose, but the purpose of a moment, was to be answered by it, the charge would have extended to all the rest of the majority of the council, is equally clear; but out of lenity, it seems, they confined their charge to two only: the charge was groundless; the crime none; they had done no more than their duty;—they were perfectly right in the subject of their difference. If they had been wrong instead of right, the motion for adjournment should have precluded this motion, and consequently they were not or could not be in substance, and in form, what it imports to be the opinion of that council.—In that condition the council broke up.

It is singular enough, but true, that in the charges of this information, this character of members of the council is applied to them.—It is stated; they being in, and continuing the character of members of the council about them at the time they are usurping the government of the country and seizing lord Pigot:—I will give the special pleader more credit than he deserves; it might have slipped him, perhaps more by accident than design:—

there they are so described, and truly described, for such they were. Thus the business stands on that important day, the 22d of August 1776. Upon the next day, the 23d, two incidents happened, one upon the part of the prosecutors, the other upon the part of the defendants; both of which merit a little attention. Upon the part of the prosecutors, at a meeting stated to be in the afternoon of that day, the remaining five members of the council were resolved to be suspended; it being taken for granted Mr. Stratton and Mr. Brooke were suspended the day before; and one of those five members, sir R. Fletcher, was ordered to be arrested upon a charge of a capital offence, and to be tried upon a charge of mutiny; the orders were executed in the course of that day;—thus the day passed, upon the part of lord Pigot and his adherents.

The same day, upon the part of the rest, was passed in coming to resolutions of the sort they read to you; first the letter to colonel Stuart, giving a discretionary order, as it is called, to get possession of the fort, to arrest the person of lord Pigot, if he should find it necessary, and to give effect to that measure, by those means, which, in his judgment and discretion, should occur to him to be the properest for the purpose: whether this order of the defendants, or that by the other party, were prior in point of date, does not appear; because in a country, where the usual hour of dining is one o'clock, or at the latest two, it makes a difference with respect to the term called *afternoon* from any other place, as may be here, where the hour of dinner is 3 o'clock: 3 o'clock is the time fixed, for one of the orders; and afternoon for the other; the hour of dining being the same, it does not appear but their consultations may be acts of the same moment; which was first or which last, if any priority between, nobody knows, nobody can ascertain.

Before I go from this point, you recollect I called for a person who attends the East India House, for the purpose of knowing, whether the original papers were here, to see how it stood in the original letters; for whether rightly or wrongly informed, I am informed by my clients, to the best of their recollection, the date of that letter will be found to be 8 o'clock, instead of 3 o'clock; whoever recollects the difference of figures 3 and 8, knows whether they agree, and knows the extension of a line a little farther or stopping, at a little shorter, makes all the difference between 3 and 8. The original letter is not here; I don't desire it to be taken for granted, but the fact is suggested to me to have been so; I have no proof of it. But as the copies came home authenticated by the parties themselves, if they suffer by their own inattention folly, they must be content to abide by the consequences of it, if it were material; but 3 o'clock, and 8, and afternoon may, for aught appears to the contrary, be applicable to either, which cannot be denied to me.

Then it is said, they came to resolutions, which imported to be an assumption of the powers of government; they came to the resolution of communicating their proceedings, to the governor and council of Bengal. You will observe, in the progress of this business, in different periods, on both sides, they concur in the same idea of submitting their case to the governor and council of Bengal. I believe, myself, that idea took its rise from an act of parliament which passed some time ago, constituting a new form of government for Bengal, amongst other provisions authorising that government to interpose, to controul, and direct all the rest of the governments in all parts of India, upon certain subjects. Whether this subject is such as they might interfere upon, is not clear; the gentleman will tell you it is not; be that as it may, the parties on both sides might mistake; but conceiving it right, that they transmitted to that government an account of their proceedings from time to time, is most certain. I desire it may be remembered, in justice to my clients, after the transactions of this day passed, they sent an account of their proceedings to take the sense of the governor and council of Bengal.—Here let it be permitted to me to say, and I will prove it if necessary, the governor and council of Bengal, in consequence of all these references, approved of the steps taken by my clients, and disapproved of the steps they had been encountering; and declared the fullest approbation of their measures, mentioning all the exceptionable parts of those which had been used upon the other side. They passed a resolution to support the government in the hands of the defendants, in which it had been placed; and concurred in their resolutions: and give me leave to add, wheiher they had a power to controul by this declaration, or the others to be bound by their decision, aye or no, their opinion merits the attention I am claiming for it. It is an opinion given by Mr. Hastings, sir John Clavering, Mr. Monson, Mr. Barwell, and Mr. Francis, not general Hudson I believe, but it is an opinion in which those five people concurred, and which five people, I believe it is pretty well known, never concurred in any one opinion in the course of their lives; which five people had been distracting their councils by every species of opposition and violence; and which five people, are supposed, by some persons who have turned their attention to this subject, to have differed upon every point in question. The circumstance of their concurring, proves they were not aware of their differing upon the point in question, with some things which might be relative to themselves. However, they agree in this, those measures insisted upon by lord Pigot were perfectly contrary to what was insisted upon by Mr. Hastings: the force of the observation consists in this, with all the differences with respect to their different sen-

timents, passions, judgments, which their sense or nonsense had produced among themselves; they all, to a man, unanimously concurred in disapproving all the measures, the consequences of all these disputes upon the coast of Coromandel, which had been pressed upon the part of lord Pigot; and they all concurred in those measures taken by the present defendants, and all they had done in consequence of those measures; and they concurred in a resolution absolutely to support that determination, and to support those measures. It is not very impertinent to add, if there was still any doubt,—I speak with deference, whether my lord will think it is of sufficient consequence, so as to bind and preclude the agitation of the question here,—the Company at home have in terms the most explicit, the most concise, the most unequivocal, and the most unambiguous, declared their principles on all the points, in favour of the defendants, and against the claims of lord Pigot; so that, at any rate, these claims can never be revived; these kinds of questions can never be renewed; the council and presidentship there, and every where else, have now a clear line of law upon the subject, which puts an end to the revival of those kinds of claims: whether they can be considered as declaratory of what was the constitution, or considered as only declaratory, and enactive of what are to be the future constitutions of this Company; or if these determinations in Bengal or Leadenhall-street have decided upon the subject, or left it open; in either case, they are great authorities for the purpose to which I am applying them. What are they? the sentiments of men very distant in point of locality; uninterested in point of possession. Whether the judgment of those two bodies of Bengal or Leadenhall-street as distinguished from each other:—or having before distinguished Bengal where the individuals were continually differing;—yet all these persons have concurred in entertaining but one opinion upon this question. It would be strange as it seems to me, if the contrary of that should be taken here to be so clear, which, in their judgment, was so clear in the way they have decided it. Considering the judgment of those who have decided upon it, I cannot be mistaken in supposing credit will be given me for the observation, they were acting sincerely upon their opinions, such as they were; be they right or wrong.

This question upon the 27th, my learned friend thought best to conclude with saying, what lord Pigot had upon that occasion proposed, was a wise, sensible, moderate measure, which was to refer the dispute to the directors: how wise that might be, depends altogether upon what we mean by the word wise.

If he meant to say, it was perfectly wise for lord Pigot's purposes, or perfectly wise for his purpose, the sense of the words de-

pend a little upon the consequences of it, had it been acquiesced in. If it was temperate, it depends upon observing what the apparent purpose of it was; that it was sensible, is another repetition of the word wise, which requires discussion. What is the consequence of waiting till the Company's pleasure was known? Lord Pigot must have been left not only in the possession of his office and the influence that belonged to it, and in possession of the support he had then procured, and the additional support of what he would have procured by that means, but in the possession of all those claims, and the exercise of all those claims: then see a moment what the condition of the defendants and the rest of the council must have been; lord Pigot puts previous questions or not, as it suits his purpose or not; they are innovations when proposed by any body else, they are no innovations when proposed by himself;—Lord Pigot puts questions, wrong or right, when he pleases; he refuses to put questions, right or wrong, when he pleases;—lord Pigot claims the sole right of agitating questions when he pleases;—and he claims the sole right of talking upon them, or preventing others talking upon them, when he pleases;—Lord Pigot explains himself, by stating distinctly as a claim of his, that he has the sole right of concurring or refusing to concur; or insisting, that without his concurrence, the acts of the whole council, exclusive of himself, are a perfect nullity, and waste paper,—that they bind nobody, and relate to nothing;—that no resolution of the whole council, without his personal and individual concurrence, is any thing. These are the powers of which my lord Pigot 'wisely, and temperately,' as it is said, proposes these gentlemen should leave him in possession, during the interval necessary to write to Europe, and have an answer. They who think lord Pigot's measures wrong, would of course think such a measure as this, would be madness, folly, ideotcy, and ruin, if they thought it their duty to insist upon their own measures, and their own rights, and *vice versa*, if they meant to abandon their own rights, they refer to his measures, the moment they consent to the reference of them to another year; they would leave him in possession of proposing any thing for their consideration, and putting a negative upon any thing they proposed. I suppose the noble lord got that idea, from reading the history of Scotland; when certain Lords of Articles claimed to themselves the right of proposing and talking upon any subject, and it was reckoned a crime of a high distinction to talk about any thing not proposed by those Lords of Articles; which is just like the clerk of a parish, insisting it was proper in him to sing to any tune he pleased, but it would be criminal in any body else: perhaps he might have got it from some confused account of what passed in Ireland, which was like to be a little disputed; whether the parliament of Ireland should talk about any thing

till other persons gave them leave, by bringing in the heads of bills. Unless my lord Pigot's ideas were taken from the one or the other of those ideas, to which I alluded, I protest that I am unable to know how this strange proposition got into his imagination, subversive as it is of the very principles of community, and the participation of power; it amounts to nothing more than this, with respect to the Company at large—we make you lord Pigot our representative with a full power to do what you please; we give you a council for the purpose of having somebody to laugh at; you may get them into a vein of talking something for you to laugh at; and then you may tell them, they are not to talk any more for the rest of their lives. In this case, the silence imposed upon them, was much more than a Pythagorean silence; who were told they might talk some time or other.

But these are the claims that are gravely insisted upon, to be maintained; they cannot however be defended; it seems to me not necessary to say much upon my part to overturn them all. My learned friend says, this was a salutary and a prudent measure, though it did not meet with the approbation of those to whom it was proposed; for they had engaged themselves in golden bonds, which were to come from the revenues of Tanjore. I stated, at the outset, what was the situation of those revenues; the question between the parties claiming, and the parties in possession, is still open; the party in possession is the rajah of Tanjore; the party claiming is the nabob, and a Mr. Benfield claiming under the nabob. Not a particle of unfairness or corruption is proved, so as to involve my clients in it. If I had asked any of the gentlemen, after they had got back again to a better temper, whether they believed Mr. Stratton had any share in those contracts, which my learned friend hinted at; they would have told me, no: they did not give so much attention to what they considered as slander, to make it the subject of a question of that sort. If it were my case, in spite of the suggestion of my clients, I would judge for myself; I would never attempt to prove innocence till somebody had endeavoured to prove me guilty, understanding then that I act wisely and rightly. As to those 'golden bonds,' I make my learned friend a present of them; to wear them, if he thinks them ornamental—to sell them, if he thinks them valuable; or to make a better use of them than my clients, who have had no opportunity of making use of them at all.

Then the measure taken by my clients the next day is impeached, for the folly of it. If my clients had been only called fools in the course of the day, I don't know whether I should have given myself the trouble to engage your attention, to repel it; but when they are called knaves, I feel myself a little inclined to protect them. Let me see, whether with more propriety they are called fools or

knaves. They were four to four, if they submitted to Mr. Stratton's and Mr. Brooke's suspension; and the motion was carried by the casting vote of the president. Why do any thing of the sort they did? Why do any thing not justifiable upon the ground of necessity, when the object was within reach? without it they were 4 to 4; by carrying sir R. Fletcher with them they would be five to four; and they would have got rid of the president's casting vote, which was still controlable, by having five to four. It is said sir R. Fletcher, though ill, might be carried, for when ill, upon other occasions, he has been carried. What the state of his health was, I cannot tell; but this I can tell, by lord Pigot's means of getting rid of Mr. Stratton and Mr. Brooke, the seven were reduced to five; and by the absence of sir R. Fletcher, that which would have been five, amounted to no more than four; and that four themselves might be annihilated, as in truth they were, in the course of the next day. In the course of the next day, they published a paper, imputable to sir R. Fletcher as an offence, and they signed it, and concurred in it; that was the ground taken for suspending them the next day. I believe in form it was so; but in substance need it have been so? might it not have been competent, and would it not have been competent, after what had been actually practised by lord Pigot for the same reason made use of to reduce the six to four, to get rid of the four likewise, if they had signed the paper, they were in the act of signing, which nobody but himself prevented? they had directed it, and signed a minute in the book ordering it; they stood in a situation distinct from their opinions; and they knew very well the fate of their opinions would be their own fate, if they had not by their vigilance taken proper measures to repel and prevent it. It is said, in this extraordinary cause, that in truth there was another gentleman at hand, who made his appearance the next day from whom they might expect something extraordinary. Gentlemen, this was Mr. Lathom, who had been there, did not attend, but who might have attended; and it should seem in this part of the case Mr. Lathom's name was forgotten; and in truth it was stated as a grievance upon the part of the defendants, that he had no other crime than that of being a friend of lord Pigot's. If Mr. Lathom was that sort of criminal, they had no sort of expectation of assistance from him, they knew him too well to expect any thing from him, and they did not trouble themselves about his absence or his presence. If it had been thought of importance in the course of these litigations, he would have been called for; he was upon the spot, though under some predicament, from which, it was understood he might have staid away if he pleased; he was the chief of a subordinate settlement upon that coast, and he might have been sent for sooner if it had occurred to any body his presence was material; the folly of the measure therefore

I think does not strike; but the rectitude of the measure is the question between us, not the folly. It is said they had not the least violence to apprehend from lord Pigot. I don't know what is meant by violence; if it is meant to say they had no reason to expect lord Pigot would strangle them, hang them, cut their throats, or poison them, I believe they had as little ground to apprehend that sort of violence on the part of lord Pigot, as he had to apprehend it from them. It was not in the apprehension of them, or any body; the conduct of none of the parties warranted that sort of violence: but they had this to apprehend from lord Pigot, that he would put an end to their political existence; and that they did not misapprehend him, is perfectly clear from the papers produced that day; by the one of those papers, he puts as complete an end to their political existence, as they could have done to him by theirs; for it suspends the remaining unsuspended members of the council, and charges sir R. Fletcher with a capital offence; which supposes he had a larger share of guilt, because he was threatened with a larger share of punishment. In this situation they stood, but that situation forms the question between us. I shall now proceed to a detail of the subsequent transactions; meaning again to revert to it for the purpose of concluding with what I shall submit to my lord by and by to be the real question between us—but passing over it for the present. It is said they issued those orders, in consequence of which lord Pigot was arrested; the learned gentleman says: 'I will not state the particulars of that transaction, because nothing more can be wanted to excite your detestation of it than the defendants' own account!' Whether the defendants' own account has been read, I don't know; if it has, it escaped me; it excited very little detestation in me.

Court. No; it was not read.

Mr. Dunning: If not, that is not the way of exciting your detestation; and my learned friend might have saved himself the trouble of mentioning it. I am sure there is nothing in their account which, if it had been read, would excite your detestation of it. My learned friend has called two persons to speak to the defendants' arresting his lordship. Mr. Dempsey was produced;—who is of a very important character, which was alluded to frequently, and named more than once;—he was produced, as a witness, to say something infinitely important, and very material for the purpose of explaining some part of the charge. Who is this Mr. Dempsey? Is he a gentleman, by trade or profession?—A postillion, a post-chaise driver, or coachman; who has been dismissed from his service by Mr. Benfield with a horsewhip, which the witness allows Mr. Benfield perfectly well knew the use of, and for that he hopes to obtain damages,—for that application of the horsewhip which was applied to this Mr. Dempsey. This was the person of importance, that every body was

to do I don't know what with. I protest I know as little what this importance is, as when I heard my learned friend first talk about it. It seems he drove for Mr. Benfield a post-chaise; that he went by his directions to colonel Stuart in that post-chaise; he says that 'colonel Stuart has a post-chaise of his own, but whether any thing was amiss with the horses I don't know; my master lent him his post-chaise, and I went to attend colonel Stuart.' This post-chaise was spoken much about by my learned friend; as if a post-chaise was an engine of torment, as a pillory, or a pair of stocks, which a man can only be put into for the purpose of torturing him; to me it operates as another sort of idea; for I have a strong inclination in my mind to be now in my own post-chaise, if I could;—but this gentleman, this important person, and the more important personage, his post-chaise, were ordered to attend upon a particular occasion. I asked him, whether his master had not the reputation of keeping the best horses in the settlement? he answered, yes, Sir. The best post-chaise in the settlement? Certainly Sir—And are not you the best driver that is, ever was, or ever will be in that settlement? Most assuredly, your honour. Now really and truly, gentlemen, can you find any thing very criminal in the purpose of this post-chaise being lent to colonel Stuart to convey my lord Pigot in? the colonel having borrowed it of Mr. Benfield, who is proved to you to have the best of all possible post-chaises;—that post-chaise to be drawn by the best of all possible horses;—those horses to be conducted by the best of all possible drivers:—that is the cruelty and severity, and that is the mischief with which this post-chaise threatened lord Pigot! Really, gentlemen, it is difficult to talk gravely upon such subjects as this; and I hope I shall be excused for talking a little otherwise.

Then Mr. Monckton is called, a near relation of the noble lord, who expresses very strong resentment against what he conceived to be very improper treatment of lord Pigot, and still seemed to retain his temper in some measure; I don't mean it as an imputation upon him, far otherwise;—but it was for the purpose of drawing your attention to the justness of his opinions in the manner he draws them; yet I should hope you have not the smallest inclination to draw yours from his—I mean with respect to the conclusions he drew. The order in which the story was first told by my learned friend was this: Orders were issued, as pointing out the night as the time of execution, and assigning as the reason for it, that it might be a means of preventing an alarm in lord Pigot's family: that night was an hour of deeds of darkness, as if it was impossible things could be done honestly or safely in the night, or that such scenes and transactions could not bear day-light! As to that of avoiding to alarm a part of the family, it was perfectly ridiculous; he treated it as if

he supposed the night would be more alarming than the day;—now I differ from him; he thinks that transaction was most likely to alarm, when it was most unlikely to be known. If he ever submitted to his removal, intended by them, and attempted in the night, when the family of lord Pigot, and his daughters, and Mrs. Monckton, being one of those, were in their beds, they could not be alarmed by it. If they had found next morning that his lordship was removed, they would have been told where he was, which would have put an end to any fears or reproach upon the score of that. For these reasons, it occurred it would be avoiding an alarm; therefore they transact the business in the night. Probably, if it had passed in the day, they would have found lord Pigot with his daughters; who from their sex, and their ignorance of the country, might have conceived danger where in truth there was none; they might not have listened to information, they might have been prejudiced by their alarms. But why should they chuse the night? Are the nights in that country quite so terrible to the ideas of people who travel, as they are in this country? Do not we know the night is the time people in that country prefer to travel, when they have the benefit of the moon light? Don't we know it is done in colder countries than our own? This is the purpose for which colonel Eidingtoun goes to colonel Horne, in whose custody lord Pigot is said to have been;—custody, did I say? It was a custody of that sort, which Mr. Monckton truly and fairly represents: there were always some guards, whose business it was to be in sight or near him, to prevent his going from the situation in which he was placed at the Mount;—not for the purpose of incommoding him, or offending him, or keeping him from sleeping, eating, or talking: they used to keep at some distance. Whether they did continue in that way with him, or with a more or less degree of attention, according to the more or less apprehension of danger, real, or intentional, it is nothing to the purpose. My lord Pigot was walking in the viranda, by the door, for the purpose of enjoying the cool, in that very night when he was found by Mr. Monckton; who says, colonel Eidingtoun and major Horne were together disputing; colonel Eidingtoun informed lord Pigot of the nature of his commission; that he was come for the purpose of removing him: some servant hearing no more than that he was to be removed, and his own apprehensions supplying what was deficient in his story, came and informed him that lord Pigot was fighting with the soldiers, who came there for the purpose of removing him to Gingee. Here I must observe, by the way, that the names that have been used in this cause are a little difficult to remember, which all of us I hope shall forget by to-morrow, but to day we recollect the differences sufficiently to find the servant had got this name into his mouth, instead of the right one.

My learned friend says, colonel Eidingtoun makes his appearance in the night to execute these orders, to avoid an alarm in the country; but they say, their intention in removing him was not (as lord Pigot expected) to remove him to Gingee, but to Chingleput; and I will take their word for it that they say truth. Not to dispute about small circumstances, if this circumstance could have been made any thing of, I should have thought it would not have been a small circumstance: nor is it a difference upon a small circumstance by any means: Gingee is a place, of all places upon the continent of India, the most remarkably unwholesome; it is so unwholesome, that instances of people coming alive from thence are rare. If the defendants had, for a moment, conceived an idea of sending him there, whomever they might have found for an advocate, they should have found none in me. I would for no consideration upon earth have been induced to prostitute my character and abilities, such as they may be, to defend the characters of such persons, who could have the thought of conveying him there; even if he had been the worst of all malefactors, they had not a right to do that; I should have looked upon them as the worst of all malefactors, and their cases to have been the worst of all possible cases. As to Chingleput, history says, it is most distinguishably remarkable and notorious, by all that I can learn it is confessedly distinguished by its salubrity—as the wholesomest of all possible wholesome places in that country. These are the traces of distinction between those two places. I speak in the presence of a great number of East India gentlemen, who know both places; and I am totally misinformed if I can be contradicted in the accounts I have given of either. These are not small circumstances, they are important; they decide upon the whole complexion of the parties to that part of the transaction about which we are now differing. Chingleput, and not Gingee, was the place which was the subject of those orders to remove lord Pigot; not for the purpose of hurting his health; if any attention to health was the consideration, it might be stated rather for the purpose of mending his health: I will not overstrain it, I believe it was chosen as being perfectly unexceptionable as to the article of health. They had conceived—where they were informed I do not know or care,—that, in consequence of some practices of Mr. Russel with the officers of the guard, that Mr. Russel had at least conceived a design, without a participation of lord Pigot, to get possession of the fort; that was called a disturbance; I dare say Mr. Monckton would not say so, if he did not think so, but Mr. Monckton said that was lord Pigot's care to avoid; I hope that was truly stated respecting Mr. Russel. They apprehending there was some such design, some where, no matter where, by Mr. Russel, if they please, or any other person, to

excite commotions among the soldiers, that seemed to be replete with difficulties that were to be put an end to, to prevent their being again brought upon the carpet; to avoid those evils, they thought it best to send lord Pigot from this house of major Horne's without any fortification about it, to a place of proper safety, for Chingleput is a place of strength, force, and security; in that country, within the limits of which a prisoner may be better secured, than at the Mount, which is a village in the neighbourhood of Madras, where the people of fashion and fortune go for amusement,—no fortification,—a place full of houses of pleasure; the house of major Horne was one, lord Pigot's another; the house of major Lawrence another; of Mr. Monckton another.

Mr. Monckton, in stating what lord Pigot said or did, says, upon col. Eidingtoun's saying to lord Pigot, Gingee was not his orders to take him to, all they wanted was to remove him to a place of safety; lord Pigot addressed himself to the soldiers, and said he desired to be placed in his own fort, where he should know how to act: the soldiers who stood round him were silent, and said or did nothing. But, says he, I am convinced they would have done any thing lord Pigot would have desired. Now, Mr. Monckton will excuse me, if I declare to you, with all the truth I am capable of expressing, that the premises from which he draws that conclusion, have impressed my mind with a clear contradiction. The words were, 'lord Pigot desired to be sent to his own fort, where he would know what to do.' Can any body doubt his meaning, by the words, 'Place me in my own fort;' I, with my own assistance, or others which the place affords, will use the means to restore what I have lost, and to regain the possession of the country which I had lost?—I pursue it no farther; would any man alive concur with Mr. Monckton in the inference he draws, that he was convinced the soldiers would do any thing lord Pigot desired? or will they agree with me, in thinking lord Pigot pursued that no farther, or the soldiers were not in a humour to do what he desired, to place him in his own fort?—That is the difference, in which I shall disagree with Mr. Monckton; not questioning the fairness of the conclusion in his own mind, but making use of it as an instance, admitting the truth and accuracy of their evidence in general, to shew how little attention is really due to the opinions of honest men, though delivered under the sanction of oaths, in which their passions are suffered to mix. The impressions upon his mind, are impressions upon the subject which make that appear to him to be clear truth, of which to me, who have no passions upon it, the direct contrary seems to be as clear as it is in the power of language to express, or in the power of the human heart to feel.

So much for the witnesses. I must not dis-

miss this part of the case, without reverting again to the opening; there is a letter, upon which my learned friend said he was happy, from the regard he bore to col. Stuart, to find his name not subscribed to it. I am sorry to find this exceptionable passage in that letter, by a suggestion respecting that same col. Stuart not being liable to it. It is an imputation which my learned friend says he would not give, if he did not feel, that instead of throwing an imputation upon col. Stuart he should be able to exculpate him from it, and throw it upon them who adopted it. For, says he, this to which it gives me pleasure to find col. Stuart's name is not subscribed, is an expression, which directs and commands assassination in terms than which an assassination was never commanded in plainer. Did it so strike you, when you heard it? the expression was this:—

If there should be any attempt to rescue lord Pigot,—I don't mean to give the words, but the substance of them,—lord Pigot's life must answer for it, and you will signify this to him. As your last resource, lord Pigot's life must answer for it, and you will signify so to him.—In the first place, did you ever yet hear of a man who meant to command or commit an assassination, first to go to the man he meant to assassinate and tell him so;—Sir, I have an order, under which, some time or other, I shall assassinate you; I am not only ordered to take your life, but I am previously ordered to tell you so? If a man came to me with an order in those terms, I should tell him thus, there is somebody means to frighten me, or this is out of bravado; though perhaps this is not in the nature of an incendiary letter, which if I could get hold of would hang you. But this letter is, and my orders are, to assassinate you and tell you so. Am I to tell him I will not be assassinated? I should say, if you mean to take my money, or my watch, there they are, take them, and go about your business. It is said by my learned friend, it meant assassination in the plainest of all possible terms; they were so plain, that two hints from Shakespear, which were more obscure than this, that were understood to mean assassination, were produced. It is no assassination here, for the context fails; those hints are, 'Buckingham, I want to be king; I cannot be king; I cannot be king unless my nephews be suffocated,—Ergo, go and suffocate my nephews.' He does not say this, go and suffocate them: in that my learned friend says true, but he says 'I want to be king.' Now had Shakespear, who was possessed of a competent knowledge of human nature, put into the mouth of any person assassination in terms like this, I should submit that Shakespear was not born on the banks of the Avon; but perhaps a river we have some connections with, and expect soon to have some news from, on the banks of which I should expect his Shakespear was born:—but this Shakespear is not my Shake-

spear.—If I were told it was, I should be driven to a conjecture, and accounting for it by some such reason. If this is not enough, there is a postscript, it is said, decides upon the subject; the postscript mentions an application for some of his horse; this puts an end to equivocation upon the most decisive order of assassination; and the postscript about the nabob's horse means no more than this, the nabob's horse were to be the nabob's assassins.—Did you ever hear of assassination upon horseback? that is an odd sort of character: to me it would occur as soon to think of a troop of horse of churchwardens, as a troop of assassins on horseback. My learned friend does not know who the horse were, nor what their numbers were: they were stated to be employed for the purpose of conveying backwards and forwards quickly what passed; my learned friend thinks that a strange idea; for a troop of horse to be placed there for that purpose, was a pretence too shallow and too flimsy to pass with you; the whole, therefore, must be for this purpose, they were to perform the part of assassins on horseback.—I will inform you what they were; they were 12 in number, stationed by the nabob for the purpose of attending, and avowedly so, to give quick intelligence through the means of such superior fleetness, with which their horses would enable them to perform the business; they were stationed to perform that business. It is said to be strange and ridiculous, for there was no enemy near, nor any purpose for which horse might be employed.—So you are to suppose, under those circumstances, there was no hostility intended by the neighbouring powers. It is said this was for the purpose of assassination, and that unquestionably the intention of col. Eidingtoun, and those who gave the orders to him, was to assassinate lord Pigot, if lord Pigot suffered himself to be removed, that he might be carried to the place where col. Eidingtoun would convey him;—the place is admitted to be Chingleput and not Gingee—colonel Eidingtoun was then to assassinate lord Pigot: if he did, it must be in the way to Chingleput; then colonel Eidingtoun, for no motive or reason that has been suggested yet, having no interest of his own, no quarrel of his own, no resentment of his own, having orders to carry lord Pigot safely to Chingleput, is supposed to intend to murder lord Pigot by the way. These suppositions cannot be easily adopted, if they were put to any reasonable man;—I had almost worked myself up to an inclination, notwithstanding I know what our clients entertain of us upon certain subjects,—to say to my learned friend,—I would give up the cause, if he would rationally and coolly tell me, that he himself seriously believes assassination was ordered or intended by the letter or the postscript respecting the nabob, or sending col. Eidingtoun to remove him from the Mount to Chingleput. If either of the gentlemen had it seriously in

contemplation, or wished the assassination of lord Pigot, or to destroy lord Pigot, or to hurt him in the sense into which this letter or postscript is said to be capable of being explained,—I give up the cause as being incapable of being defended. For, sure I am, no rational man, divesting himself of passions arising from the consideration of any other character or cause, can or ought to say seriously to you, under any of the circumstances, that lord Pigot's death was intended by any of the defendants. He could not remain under such an idea for a moment. In this I hazard nothing, because I am not claiming, in behalf of my clients, any thing upon the part of humanity, nor any thing upon the part of justice,—I am claiming a right in not having deserved all this which has been imputed to them, as having an attention to nothing but their interest. Can any man who hears me, hesitate to assent to the proposition I am going to state; that such conduct as they are represented to have held, would not have been more repugnant to honour, and more repugnant to duty, than to their clear and undoubted interests?—What could their enemies desire more than the accident of lord Pigot's death?—What could have brought more calumny upon them, than the accident of lord Pigot's death, unconnected in point of time and circumstances, with any thing for which they are answerable? If lord Pigot had died at this time, and under those circumstances, could they have held up their heads in that or this country? could they have maintained their reputations or fortunes here, or there? Or would they have been suffered to exist? and would they not have merited and received the most exemplary punishment the laws could inflict; or, if the gentlemen like the language better, what they deserved? So destructive it would be to every interest they must be supposed to be attentive to, and every plan of their future lives. Can it be conceived, that these men, of whom we know nothing but what the cause affords, could have no attention to their own happiness; could have no wish to acquire and retain that which most men feel to be the most valuable of all acquisitions, the good opinion of their neighbours; and their own good opinion, which was still more valuable? Are they to have no credit given them of that sort? Would not a regard to their own interest be a sufficient security against so foolish and groundless an aspersion? I am treating this perhaps more seriously than it deserves, or has any title to. In the progress of this cause, there are many small circumstances, and I don't know whether some of them might not escape my notice; they certainly have. There was one passage cited, tending to confirm this imputation, in which it is said, had we had such purpose to execute, could we have desired a more favourable opportunity, than the resistance to this attempt, to remove him to Chingleput? That, my

learned friend says, is an idea that could not occur to any body, but one who could meditate such an act; such an idea could never have occurred to me; for the argument that is used in that defence, is natural and conclusive upon the subject. Could there have been, in the nature of things, a fitter opportunity, if they meant to execute such a purpose? There certainly could not be; if it was proper at all, it could not have been executed but at the hazard of all the consequences I have been stating; but the ground to be taken for the purpose of resisting those imputations which were thrown upon them, is answered by it; for they say this shews we did not intend it. At best it would have been a kind of chance medley, a kind of manslaughter at worst, but not a murder; that is a sufficient circumstance to preclude the imputation of an intention to murder.

No circumstance would have justified or extenuated the crime; no opportunity could have been found which could have justified them; but still, most undoubtedly, as between that moment and any other, it was as this argument supposes the fittest; and that is all that this argument does suppose. Then my learned friend went, on very pathetically, by saying lord Pigot died in May; and a circumstance of great commiseration that misfortune produced; which was the necessity the family were reduced to, to beg his dead body of Mr. Stratton. I really was ready to believe that idea came from Mr. Dempsey, the post boy; I am sure it could come from nobody else, who could be called as a witness to prove it. It was described, by my learned friend, to be something like that of applying to another Achilles, to beg the dead body of another Hector. After his death there was no such occasion. Mr. Stratton had no custody of lord Pigot's body when alive; and he had no custody of it when dead; and as humanity required, it has been admitted the species of guard was of the sort as could never subject the body living or dead to this treatment; but the guards were withdrawn before he died; and there was no such embassy to beg of Mr. Stratton the dead body. It would be an imputation indeed upon them, had there been a pretence for that sort of suggestion.—I don't know from whence my learned friend got it; unless it was from reading previously that book which gives us pleasure to read,—where there is an account of the dead body of Hector being begged by a Priam of Achilles, who had dragged it round the walls of Troy before it was given up; the application of such an idea, to lord Pigot's case, you must observe, has no foundation in the nature and truth of the transaction.

Having got through with the particularity due to the quarter from whence the observations came, which I have been endeavouring to explain and give my sentiments upon,—we revert of course to that which I take to be the only question before the court;

before I state what that question is, I will state to you, upon the authority of the noble lord who presides upon the trial of this cause, and who presided upon the trial of another cause in this place within this last week, in which he stated with precision and that justice which is felt by every body, acquiesced in and approved by every body, his ideas how questions like this should be tried;—questions respecting the conduct of men in office in distant situations. In the trial of those questions, says he, the great object of attention, is the heart of the party into whose conduct you are to enquire. No man ought to be condemned for small errors in articles of form, who means to be right: no man ought to be defended upon small circumstances of form, unless he means to do wrong:—the heart, therefore, is that to which the attention of juries, in subjects like this, ought to be directed;—To which he might have added, the attention of courts, when it comes under their consideration;—for that is the point, exclusively, to which their attention ought to be, and always is directed and confined. If that position be true in any instances of human life, it must be true in cases, like this, of imputations for which it is thought the necessity of the case calls, and which were attempted to be impressed upon me in various stages of the business; my answers to which have failed in effect, if you are not convinced the whole of this difference which ended so unfortunately, proceeded from a cause which had long before subsided.

If you are not convinced that the dispute respecting the rajahship being restored, was at an end before the beginning of May; if you are not convinced that Mr. Benfield's claims were finally dismissed upon the 17th of June, mixed with the consideration of the subsequent difference, upon the subject of sending Mr. Russel or Mr. Stuart to Tanjore in August; the whole of that imputation thrown upon the defendants, is cut up by the roots: there they bottom; and there they spring, from the suppositions of advantages to arise from the nabob who was to support his claim, and the suppositions of interest from the nabob to be derived from his claims;—suspicions, in their nature unwarrantable, of the supposed motives which induced the defendants to act. If these suspicions have not so bottomed themselves, as to make an impression upon your minds; and you, as a jury upon your oaths, do not think yourselves warranted, to pronounce upon the conduct and character of men, of whom you know nothing, but from the history of to day, who ought not to be condemned upon evidence so groundless, so inconclusive, so insufficient, so contradictory, and self-destructive:—If they are not grounds that can warrant you in adopting those imputations, the question is at an end: so far as the heart has any thing to do with it, it is reduced to this;—Is there any thing so intentionally wrong in the pre-

dilection the defendants are supposed to entertain for colonel Stuart, or the noble lord to entertain for Mr. Russel, that should make the heart culpable in the one instance, and leave the heart perfectly innocent in the other? If strength and violence of attachment to any person be criminal, there never could be greater than lord Pigot had upon that occasion: I believe it ought to be said, in justice to his memory, there never lived a man with more warm attachments of heart, than he possessed, and acted more upon than he. He acted violently, and strongly in any case where he thought himself capable of being justified or apologized for, upon any occasion of that sort. To that it is reduced;—if you are to convict these gentlemen upon suspicion which is short of proof, from a belief that any thing got from Benfield was the motive which induced these gentlemen to act upon the subject; the point I am now confining my attention and yours to, remains entirely at rest: upon some ground of attachment to individuals whose names occur and stand in contradiction to one another, their pretensions do not seem incompatible,—I see no reason why Mr. Russel should not go to Tanjore; but I am unable to find a reason why he should go to Tanjore; I see no reason why they should send colonel Stuart there, unless for some purposes, which I do not understand, and which might make it more for the interest of the Company; or why he should not remain at Velore.—It is no crime to confer upon the parties a post of difficulty and honour; instead of being under the shape of an imputation upon them, it is the best tribute of applause due to the human heart, I can conceive. Be that as it may, my clients say they acted from public reasons; they did not act from private attachments any more than from base motives; they meant to use the best lights God gave them to understand their duty to the Company; and they do not appear to me to be incompetent to that duty. Upon all these points, their conduct appears defensible; this I state as a clear opinion, in which I have no doubt you will agree with me.—If the point is to be determined upon a question of law, in which this discussion upon all that has been heard, read, and talked of to day, is supposed to be introduced in that question of law, I am ready to put that question in any mode to receive any discussion or decision that can be given on it elsewhere or here; or to refer the consideration of this question, before this, or any court, or every court in the hall, by special verdict, or any way the gentlemen tell me they like best.—If there is the least reason for a doubt upon this question, I am perfectly ready to submit to the consideration of the court, in any mode that can be suggested.—This is the nature of the question; if it involves any question of law in it, if it is not competent to you to decide it, and it is to be ultimately left to the opinion of a court, I will refer it to his lord-

ship new; and if upon the foundation of that, my clients should be convicted, with the reservation of a special verdict; I beg leave to say now,—for the sake of preventing any mistaken opinion, which may be sent about the town, by the opinions of people, who do not understand what passes in this place, and those to whom what passes in this court cannot be explained;—that the distinction will be more of a distinction, than a difference between a conviction and an acquittal. At the same time, gentlemen, you will not comprehend me to be assenting to a conviction. —I trust the circumstances of this case not only afford an apology, and excuse, palliation, and alleviation; but will afford a complete defence, and justification: but if it depends upon a question of law, whether they will or not,—none of which have been talked of, none of which have been argued, to the argument of which I feel myself at present something incompetent,—

Lord Mansfield. What is the question, upon the constitution?

Mr. Dunning. I am content to get the sense of the court, upon all the questions.

Court. It is your consent that is material in it:—I should be extremely glad of it. I shall tell the jury what I think of the constitution:—I should be glad to have your consent upon that point;—they shall take the opinion of the court, and you consent to a new trial, because, you see, you do not want a consent, for if my opinion should be wrong upon any point of law, to your prejudice, you have a right to move for a new trial;—the crown cannot;—no other way but your consent can do it; you cannot have a bill of exceptions here; and it would not take in the whole cause upon a special verdict;—the consequence of it would only be this,—that I should, with much more ease of mind, say what I should have thought myself obliged to say without it, but with much greater ease to my mind, knowing it can hurt neither side.

Mr. Dunning. I understand it to be for the interest of the Company, for whose interest alone, it is stated to me, it would be proper to have the sense of the court upon all the questions of the constitution, with a view to prevent future mischief.

Court. The questions relating to the constitution, lie in a very narrow compass; the argument may be wide.

Att. Gen. It is clear that any possible state of the constitution cannot concern or affect the innocence or guilt of the defendants.

Court. It may be so: In case it does, the defendants do not want your consent; it is in your favour.—If the constitution is as lord Pigot says, there is no question at all.

Mr. Dunning. I admit upon that state of the case there can be no question,—I can make no question.

[Here Mr. Attorney General rose to reply.]

Mr. Dunning. My lord; Mr. Attorney Ge-

neral stands up for the purpose of replying: I should be glad to know, whether he replies by prerogative, or what other right?

Att. Gen. I said from the beginning, I meant to reply. I rather fancy I am within the rule; I have a right to reply if there was nothing like evidence produced;* but in the course of the reading there was evidence read upon the part of the defendants.

Mr. Dunning. That is no other claim but from prerogative, and this seems to be no cause of prerogative; they read a great deal from books containing the subject matter disclosed, which entitled the other party to read any thing in the same book which he thinks beneficial to him; if he requires the whole, or any part of the whole, it must be read; or we might have sat here above a day or a week.

Court. The Attorney General has a right to reply; but the point he reserved himself upon, was the justification; that is what I understood he reserved himself upon.

Att. Gen. It saved a good deal of time in the opening; but at any time, in such a cause as this, of such importance, I don't think I should do my duty without it, and even if it were not in a matter of very great consequence, under such orders as I received for the prosecution, if I did not deliver my thoughts to your lordship and the jury.

Court. You certainly have a right.

Mr. Dunning. If your lordship allows him that, I must beg leave to observe that we have evidence to offer; and I thought I might have avoided that without any inconvenience to my clients, and that it would prevent a reply in declining to call the evidence; but I must beg to have those letters read, which I have referred to, as being explanatory of the sense of the people at Bengal; in these circumstances it is competent to me to read those.

I shall at all events read those papers, in evidence, which shew the ancient constitution of the Company. I shall then go into the consideration, and enquire what constitution more modern times have produced. I shall then call a living witness or two, to explain some vacancy which may be left in the evidence. All which I feel I must do, which I was in hopes I might have saved the time of the Court, without any inconvenience to my clients.

The thing I call for first, is the answer of the governor and council of Bengal, representing their opinion of the transaction.

Att. Gen. My lord; I object to that evidence; because I conceive the gentlemen at Bengal, have no more authority, in this business, to give their opinion, than any other set of men, in any other part of the king's dominions; or at least no better authority

* With respect to the right of reply where no evidence has been produced in defence; see lord Mansfield's summing up, in the Case of Horne, vol. 20, p. 763, and notes, and the Cases there cited.

than the governor and council at Bombay had. The settlements are distinct, and independent of each other; I take it to be clear, they have not more than other persons any authority to give an opinion; your lordship will not hear those opinions.

Court. Certainly not;—I shall not receive it upon opinion. What are the applications to which this is an answer?

Mr. Dunning. There is this difference between an application to Bombay and Bengal; to the settlement at Bengal, both parties applied; we have read letters from lord Pigot, as well as letters of ours, stating a difference of opinion; and the answers of the people at Bombay, I wish to read.

Att. Gen. All that was read, all that passed, shows that there is a communication between one presidency and the other, of the transactions of each presidency; the correspondence is sent from one to the other, upon account of the events that happen; they are sent in inclosures, a number of parcels together, with accounts prior to that in date.

Mr. Dunning. I believe Mr. Attorney General is mistaken in what he has last stated. I believe it never was the practice, antecedent to the act of parliament which gave rise to it, for them all to send to Bengal; but since that Act, all the other settlements have sent transmissions of the sort to Bengal; but from this place to Bombay, or to Bencoolen, or any other settlements, no such transmissions were ever heard of. It is wholly and solely to Bengal, I believe; Mr. Mitchell will tell you in a moment, if he is here.

Q. to Mr. Mitchell. Is there a transmission of the proceedings from Bengal to Bombay, or from Madras to Bombay?—*A.* No. There is from Madras to Bengal; and from Bombay to Bengal.

And every other settlement to Bengal?—Yes, and always from Bombay to Bengal; peace or war.

It does not exist in any other settlement, but to Bengal?—To no other place, in general.

Mr. Dunning. I will tell your lordship the nature of the contradistinction given.—It comprises the whole of the case.

Court. Comprise? how should it comprise a case, that from the days of Adam, never existed in any other instance?

Mr. Dunning. If it does not; it is an authority that both appeal to.

Court. If you have done, I will tell you my opinion.—I think evidence is always to be considered from the nature of the question, and the subject to which it is to be applied. We are in a case that never could exist in England, but has existed in the East Indies; and a civil necessity for a very extraordinary assumption of government, is the defence to justify the act. Now the supreme council of Bengal have the superintendence of Madras, and all the other East India settlements; and besides that, they have the superintendence

to such a degree as to put a negative to every thing relative to peace or war; so that they shall not declare war, or make peace, or make treaties, or negotiations of peace, but with the consent and approbation of Bengal; but in this superior station, and the only superior station they have in India, both parties applied to them.

Att. Gen. We dispute that fact.

Mr. Kenyon. Most undoubtedly they did.

Mr. Rous. The accounts were sent to both settlements, I believe; but I speak from recollection.

Court. Did not lord Pigot apply to the governor and council of Bengal?

Mr. Dunning. Yes, my lord; and the answer begins;—We received your dispatches, and a letter from lord Pigot.

Court. Then, I see, both applied to Bengal.

Sol. Gen. It is no reference, my lord, to the people of Bengal; it is only like the opinion of a third person who has nothing to do with it.

Court. Both of them have applied to Bengal,—Bengal was the superintendent power, and their superiors.—It cannot be read, but as the opinion of a third person; but, I think, it ought to be read, as there was an application by both to the superintendent power of Bengal.

Att. Gen. I don't oppose it, if they prove any thing like an application by both parties, by way of reference to the superintendent power of Bengal; but if it is in nothing more than a private letter from lord Pigot, and a public letter from the others, then it is a transmission to Bengal simply of an account of what they are doing; it is not an application by way of reference; it is in a communication only of public letters; and upon these extraordinary disturbances there was a communication of the same kind carried to Bombay.

Court. And I suppose there was application to the majority of the council in the same manner, acquainting them with what was done?

Att. Gen. Yes.

Court. Read it.

Mr. Dunning. Mr. Mitchell tells you, there is no such communication between any other two settlements; but only to Bengal by every one of them. If there is any doubt upon it, the answer is expressed by the people of Bengal, that they considered themselves as called upon to interpose, and did interpose with a view to put an end to the difference.

Court. Supposing they had come to blood; where was assistance to be had? From no other authority than the supreme council of Bengal, there was no other Indian authority that could have interposed; therefore read it.

Mr. Kenyon. The first article in the letter puts it beyond all doubt they did apply to them as people who could controul.

Court. I take it so, as an application by them both to the superintendent power of Bengal, as the only place from whence they could have controul or assistance.

Att. Gen. My lord; I have read the letter; it is no application to them as having any superintending power; none as having any controul; and in the sequel of the business, when, after the government was overturned and in the possession of Stratton, they applied to Bengal for directions, concerning the removal of the person of lord Pigot, the answer of the governor and council of Bengal is,—“You must do as you think good; it is not a case upon which we can give you any directions. It is not within our authority.”

Court. This is the import of the evidence when read?

Mr. Dunning. It will be found different from that, if I can read; it is this. ‘We have taken these proceedings into our most serious consideration, and have unanimously agreed in resolutions on such parts of them, as by their importance demanded our first and immediate attention, and by their nature and tendency called for the interposition of the controlling power vested in us by parliament over the presidency of Madras, &c.’

Letters from Warren Hastings, esq. governor of Bengal, and council, to the right hon. George lord Pigot, president, and council at Fort St. George. Dated Fort William, 7th of August 1776. Read.—

Court. You see the whole of it is authoritative.

Att. Gen. It is in that stile, but that arises upon account of an application from the nabob representing some acts done which he conceived to be acts of hostility. It arises upon a correspondence of that sort, and if your lordship will indulge us to go into it, I am put in possession of a paper, to prove that that assertion against lord Pigot, as governor of Madras upon that, is totally ungrounded in fact, with respect to sending for the nabob's people from Arielore. It is proved to a demonstration, those are confessed and admitted to be part of the Tanjore country, and that is in the direct spirit and letter of the Company's orders; and the people at Bengal did not know it.

Court. And therefore it is not conclusive evidence.

Mr. Dunning. I am glad the letter was read; having been read it speaks for itself, being not founded upon any information of the nabob, but founded upon a letter of the 13th, which had been sent to them, which they then took into consideration; and this letter was the result of that consideration.

Then I will read another letter, which is more immediately applicable to the subject of our present dispute, of the same date with that addressed to lord Pigot, which is addressed to sir Edward Hughes; there are two letters of the same date, acknowledging the receipt of this, and their resolutions are annexed to this letter.

Court. Oh! don't read the resolutions; they go no farther in this dispute.

Mr. Dunning. I can't say they strike me as very material, now.

Then read this from the governor and council of Bengal, to lord Pigot, acknowledging the receipt of a letter from his lordship on the 29th, and a letter from Mr. Stratton and the majority of the council of the 23d.

That letter read, page 39, vol. 2.

“We have been honoured with your letter from the Mount,” &c.

Copy of a letter from the governor and council of Bengal to sir Edw. Hughes, p. 41, vol. 2.

“We have observed with the deepest concern that the differences,” &c.

Court. Both these letters are in a decisive style.

Mr. Dunning. Yes; they are exercising, as they supposed, the jurisdiction they had.

Att. Gen. They are exercising that sort of jurisdiction we would, if any two persons had quarrelled and had each wrote to Mr. Dunning, or myself, or any body else in court. They have given what is very decisive, in point of opinion, and not much more than that. Your lordship will observe that this letter refers itself to a former letter, in which they suppose certain charges to be conveyed against the president; now I will go into it, and prove from the papers every one of those charges are falsities, adopted by the council at Bengal.

Mr. Lee. Read lord Pigot's letter, that they may have that as well as the opinion.

Court. I go upon the superintending power, the whole absolute authority of every thing, of peace and of war, and every thing belonging to the Indian powers. They are applied to, and give their opinion. As to all the other former quarrels, they are nothing; upon this very point, they interpose. If they had a jurisdiction, in the cause, and proceeded as having a jurisdiction, it would have been conclusive evidence; but it is not conclusive evidence at present; I think it exceedingly proper in a question so situated to be received as evidence, though not conclusive.

Mr. Lee. The question is, whether it is competent evidence to be received or not.

Mr. Dunning. I stated something about the former commission, about the authority given to lord Pigot.

Court. Don't go into that now.

Mr. Dunning. I had very little to have said on that subject; but I shall not go into it.

Att. Gen. I can, with very little trouble, turn to those parts of the evidence, that shew the two charges contained in that former letter to Bengal, upon lord Pigot's supposed ill behaviour to the nabob, are fairly refuted by the nabob; I do not know whether your lordship is of opinion it is proper to be read now.

Court. Exercise your own judgment; it has very little to do with the complaint.

Att. Gen. I mean the complaint of seizing the man at Arielore.

Court. Strike out that about Arielore; we are not trying the nabob's complaint.

Mr. Rous. You will find that account in 563, the examination of captain Tonyn.

Mr. Dunning. Am I to have a new case to what has been already defended?

Lord Mansfield. It arises out of your evidence; they will contradict a part of the answer of the council of Bengal.

Mr. Kenyon. By accident that circumstance has crept into the letter, to shew they approved of our proceedings.

Att. Gen. The Bengal people were mistaken in that; read it.

Mr. Dunning. Nothing upon that subject will be granted by me. I will not be knocked down by calling out, read it.—It shall not be read without my lord desires it. I have read that letter, which is an answer to the two letters, one received from lord Pigot, the other from the majority of the council to oppose lord Pigot; the receipt of those two letters are acknowledged by the answer in the first instance as well as the last, the general substance of those letters are taken notice of in it; and it professes them to be received from those quarters. Besides that, there is a passage or two said to be founded upon an information from the nabob; whether it was so founded I am at a loss to state; I was not aware it contained any thing of that sort, but thought it was an answer to something received from lord Pigot.

Court. You could not separate the other parts from it.

Mr. Dunning. I understand from what has been stated by the gentlemen, what was stated on the nabob's information was not true.

Mr. Mansfield. There are two instances stated, in that letter from the governor and council of Bengal, of lord Pigot having used the nabob ill; and there is a great deal more of it, which is wrong, besides these two particulars.

Mr. Rous. My lord; respecting the internal government of Madras, or any transactions relative to it, that letter ought not to be received as evidence in this court; but upon the ground of their superintendency, and their power in matters of peace and war.

As a ground for the exercise of that superintending power, they lay their fingers upon two facts: first, the seizing the dobbeer at Arielore, which they say was a hostile invasion upon the nabob's territory; that we will prove is not true in fact: the next is, seizing some districts in the nabob's territory; that we will prove is not the fact; we will prove, from the admission of the defendants, the districts belonged to the rajah in 1762; and that they were at the time lord Pigot was seized actually in possession of the nabob. Then the sole foundation upon which they presumed to deliver an opinion, and upon which it can be received as evidence, is destroyed by proving the facts do not exist.

Mr. Dunning. I am content the whole of

the letter may be expunged with those facts; but I object to their reading any letters in this stage of the business.

Court. They may reply to your evidence if they think it material.

Mr. Dunning. Is this a reply to our evidence?

Court. Yes, to the evidence you read in your letter from the council of Bengal; now they say that great credit should not be given to them; for the fact is mistaken: and if much depended upon that fact, it would be material evidence.

Mr. Dunning. So much of the fact, as has any relation to, or is founded upon what information was received from the nabob, so much of the letter I am content to wave and expunge. I have only to say, it was read because I was not aware it contained any such thing.

Court. You could not have avoided it, if you had been aware; you must have read the whole, if they had claimed it.

Mr. Wilson. I see in this letter they have opinions upon undisputed facts, which go to the other facts they received an account of from the nabob, which if true are equally disapproved.—The officer was then going to read minutes of the consultation upon the 11th of September, 1776.

Mr. Dunning. When I stand up, and object to reading a paper, do not read it, unless my lord bids you.

Court. To be sure they may read it, if it is to impeach any evidence you have read.

Mr. Dunning. It is to impeach the evidence only in a point I do not dispute.

Court. But if they have a mind to read it, they may if they please; they had rather have it read as their evidence, than from your admission; I don't know why.

At a consultation 11th Sept. 1776, present George Stratton, esq. and council;—The examination of captain Tonyn, read,—relating to seizing the dobbeer at Arielore.

The purport of which was; That he had received an order in writing from lord Pigot, to proceed with the troops under his command to Vickerum; and escort, from that place to Tanjore, the dobbeer formerly in the service of the rajah.

When he came to Vickerum, found him gone to Arielore; went there to him.—That one of the rajah's people delivered a letter to the dobbeer from the rajah, who proposed setting out immediately.—That captain Tonyn told him he was come to escort him to Tanjore.—That they set off the next morning, very early.—That he did not acquaint the dobbeer it was necessary for him to take any papers with him, nor does he know that any body else did.

Court. I see, from what has been read, they desired information respecting particular facts which the nabob told them of; they write about it to Bengal, and they send their

resolutions to controul the proceedings of the president.

Mr. Lind. They have no sort of controul by the words of the Act as to their internal government.

Court. Not with the government; but when they are all together by the ears, nobody can interpose if they do not.

Mr. Lind. My lord, the governor and council have no command of the forces, so that way they could not have interfered.

At a consultation 25th of June 1776, present as before, the president and council. Enquiry into the nabob's complaint of the rajah's people taking part of his territories, &c. in which those complaints are refuted.

REPLY.

Att. Gen. Please your lordship, and gentlemen of the jury; I am under a necessity of troubling you again; but I will endeavour, upon your and my own account, to comprise what I have to say to you, in as small a scope as I can; and not run again into the variety of matters which have been agitated in the close of the day, and which do not seem to me to be strictly and pointedly applicable to the information which you are to try. In the outset of the business, I stated to you under what countenance and authority this information was brought to a trial; I stated the direction I had for the prosecution; I stated the resolutions that had recently passed in the court of proprietors, when the matter was first canvassed, upon the first information coming to England. The first authentic information, and that frequently before the proprietors for their information, was a long letter from Mr. Stratton and his associates, in vindication of their proceedings, to the Directors of the East India Company at home; which letter was immediately put into print. I was not inaccurate in stating the resolution of the general court of proprietors,—however they differed in some circumstances, they were all uniform to one point; the second resolution, as strongly as the first, inculcated and commanded the restoring lord Pigot to the government. The first resolution of the court of proprietors, was to take immediate and direct steps to restore lord Pigot; there was some difference after in the mode of it, by a change of the direction, and some delay; but there was no variation from the ideas, that lord Pigot was wrongfully dismissed from the government. Mr. Rumbold, who went out with a commission from the East India Company, went out with express orders to restore lord Pigot to the government; to put the government again in the possession of lord Pigot: so far they disapproved of what had been done in the acts which they conceived to be totally illegal, by Stratton and those joined with him. Separately from that order, there was another, that the parties in this business were supposed to be much heated against one another, and were directed

to return to England, as that might be a proper measure for the future peace of the settlement. Though that passed in May, the second resolution was as strong as the first, respecting the propriety of restoring lord Pigot. As to the resolutions that passed in the House of Commons, there certainly was very full demonstration and complete evidence laid before that House, antecedent to directing this prosecution: it was thought, within the power of that branch of the legislature, proper to be done, and consistent with their duty, in order to bring the offenders to public justice. It was said, in a matter of this sort they might have done one thing different; they might have made it their own prosecution,—and the magnitude of the cause would not have ill deserved it;—and have been themselves the prosecutors, by impeachment, at the bar of the other part of the legislature. Though that was not, in my judgment, inadequate to such a case as this; I am much better pleased with this, whoever advised the mode to be adopted, for the Attorney General to prosecute; for this plain reason, I think this is a great, and will be a memorable case for example; as it will not only be doing justice in this particular instance; if that were all the object of it, and the punishment went no farther than to make some degree of compensation to private persons, for injuries they will feel to the last hour of their life, it would not be a sufficient ground for inflicting of punishment; for that partakes more of private revenge. The only end I know of punishment, is for example to others; for the preservation of the order of society; and making distinctions between the nature of small, and great offenders, for the commission of crimes that endanger the peace and well being of society. I for one think the effect of that example, is better attained in this course; by exhibiting to all who were in India and all who may meditate to go to India; to be in rule there, that in the court of King's bench, and by a jury of Englishmen, the conduct and the behaviour, the affairs of a governor and council in India, may come to be scrutinized; as in an ordinary course of justice, the facility of carrying on such prosecutions; the frequency of them, if the example should call for it, will strike much more in point of example, and be a subject much more useful, than the great and uncommon way of prosecution, attended with all the solemnity of impeachment by the Commons of England at the bar of the Lords. For this reason, it is, I am glad this mode of prosecution was adopted, and I am commanded to do it. I shall say no more to circumstances foreign to the strict merits of the cause. Gentlemen, you will now give me leave, for a moment, to call your attention to what those merits are. I beg leave to consider, in the first place, how lord Pigot went out to India; under what authority he began to act, in December 1774, when he arrived there. He went under an

order which I was astonished to hear was not sufficiently positive; though I agree the orders are not worded with that accuracy my learned friend would have put to an order of his composition; but I have read the whole order, the language is plain to those purposes intended to be effected by it. It was the object of the directors, upon account of the violated honour of the nation from that great breach of faith committed respecting the rajah of Tanjore, that he should be immediately restored to the possession of his dominions, under certain terms and conditions between the rajah of Tanjore and the Company, not in that instance, nor the rest of the resolutions having reference to the nabob, but in the business I shall state hereafter; which terms and conditions,—notwithstanding this strange comment put upon the order from some minutes read to you,—were not left to the gentlemen at Madras to settle; nothing like it: the order goes on, and article by article, states the terms and conditions to be made upon the restoration of the rajah. If your lordship turns to the order, your lordship will find I am correct in stating the terms and conditions alluded to in that paragraph. The orders are the subject of several subsequent paragraphs that follow from about the 6th or 7th; the condition is, admitting a garrison of their troops into Tanjore; and upon that it is stipulated upon the part of the Company,—for the sake of the peace of Tanjore, and in order to prevent any hostile intentions that might spring up at Tanjore to endanger the peace of the Carnatic and endanger the peace of the Company's settlements,—they are to assure him at the same time, it is not intended there shall be any diminution of the king of Tanjore's authority over his subjects; they are, that the king of Tanjore shall consent to be at the expence of that garrison, that if any dispute arises, respecting the contingent or other expences, they shall be adjusted by the king of Tanjore's agents, and president and council; and the accounts shall be made up every 3 months; that the expence of the garrison shall be settled between the king of Tanjore and the Company; and he shall assign to the Company revenues for the maintenance of that garrison. In the stating of all these terms there is no condition that has the nabob for its object, but one, and that is distinctly and plainly expressed: the Company explain themselves to mean not to infringe upon the just rights of the nabob, and they define what those rights are: that when the king of Tanjore is restored to the possession of his dominions, he shall continue to pay the tribute of four lacks of rupees, which by the treaty of 1762 he was bound to pay to the nabob. These are, strictly and plainly, the limitations and terms of the business that was committed to lord Pigot and his council to be done forthwith; and the immediate restoration of the rajah is the subject spoken of in every line of the instruc-

tions.—In pursuance of those instructions, lord Pigot went to Tanjore; and the 25th of March, it was resolved he should go from Fort St. George to Tanjore; my learned friend argues there were no obstructions made to his proceedings till that period; and to that period I acquit the defendants of any improper motives, any connection, or any thing that could act improperly upon their minds. There certainly is no evidence down to the 25th of March, that tends to create any suspicion upon their conduct; but you will observe, before that 25th of March, in the letter that was read, the great object of the nabob was to postpone, delay, protract, and put off the restoring possession of the country. As to the fort of Tanjore, he had no objection to admit the Company's troops to garrison the fort of Tanjore; but he did not chuse to restore the possession of the country. He writes letter after letter, with all the civility he could, and begging all that he could, setting forth his own merits with respect to the Company, with all the personal address he can use to lord Pigot; and desires him, by all means, to postpone, what the Company's orders left lord Pigot no authority to postpone,—the restoration of the country, he wanted to continue another year in possession of. That was meant to be the effect of his letters: a great deal turns upon the sense you will give to the words, 'restoring the rajah of Tanjore.' Was it complete upon the 14th of May? There was in Tanjore a garrison of the Company's forces; the rajah was at liberty; but to be restored to the possession of his country, meant to be restored to the revenues of his country; which meant that he should be restored to the corn of that year, as the corn there is the revenue of the country. As I am now upon it, let me take notice of a passage in this letter that afforded a comment in the ingenious defence, which I did not think would have been adopted. The Company supposed the nabob was to be in possession of the country; and they say, we must suppose that the plunder of the place, and the receipt of the revenue, for more than two years, will have rendered the nabob a very considerable gainer, after defraying all the charges of the expedition.—The Company reasoned very rightly, he had been in possession that time; he was in possession of Tanjore in September 1773 when the crop was in the ground; he had the crop of 1774; and he had the crop of 1775;—crop and revenue you see are the same thing in that country; he had received the crop of 1774, which was not sown by him; he had received the crop of 1775; and the crop of 1776 was in the ground, when the Company's orders arrived; that crop then in the ground was the great object of all the confusion and contention upon the part of the nabob, who claimed a right to reap the current year's crop,—that crop which was to be reaped in 1776; though the council understood it otherwise.

Good God ! it is plain, to a demonstration, how they intended it at that date, when no influence operated upon their minds. Upon the 25th of March, they direct lord Pigot to go to Tanjore; the state of the crop making it necessary he should proceed without delay. Upon the 24th of April, upon an application made by the rajah to lord Pigot, who was then at Tanjore, advice of which he sent to Mr. Stratton and the council, they send him a letter, in answer, in which they agree to buy of the rajah, upon account of the Company, all the crop of the year beyond the necessary quantity for the consumption of Tanjore: and in those two instances, they have decided what they understood to be putting the rajah in possession of his country, that it includes the crop of that year, which the nabob had no colour or pretence or right to continue, and which, right or wrong, the orders of the Company left them no latitude to give him; unless it was under that strange idea that the words 'for more,' might extend to keep the nabob in possession to the end of time. If lord Pigot had not complied with those orders of the Court of Directors, he would have deserved the epithets which are much more properly applied to other persons. That was not all: upon the 29th of May, upon the examination of Mr. Benfield's claims, founded upon the assignments made by the nabob, that affected the current crop of the year, the council then decide, by a majority,—not a casting vote of lord Pigot, but 6 to 5,—they decide the nabob's assignments inadmissible. Most undoubtedly they were so, with respect to that crop which was upon the ground; for, from the time of the arrival of the Company's orders, the possession of the nabob was to cease; and the possession of the rajah to commence. The nabob by writing, by negotiations, and by gentle methods, thought to prevail upon lord Pigot to delay the time; that carried it up till towards the time of harvest, about the beginning of March or April. The whole matter, therefore, that produced resistance, and the cause of all the mischief that ensued, arose from the single question which had been agitated and determined upon the 29th of May, respecting the possession of the country of Tanjore, to be restored according to the tenor of the Company's orders, which included the possession of the crop of the year 1776, which belonged to the rajah and not the nabob.

Mr. Dunning. It belonged to the crop of what was sown in 1775.

Att. Gen. I beg your pardon: the nabob had reaped that.

Mr. Dunning. In 1775, Benfield was in possession of them; and was deprived of them in 1776.

Att. Gen. I stated, that the assignment of Mr. Benfield's possession of the corn, mentions they are in the hands of his officers; and that they say, and he says, and only says, they were taken from his officers by seapoys,

acting under the Company's orders. As to that,—the orders the seapoys were furnished with, if any were given,—he is called upon to point out any part which was the property taken from him by any seapoys; and they held up redress to him. But the objects of complaint, brought the 29th of May, to the Company, are the assignments made by the nabob, and taken prior to March 1775,—the mortgages upon the growing crop of the ground,—the other article of claim, was advances made to inhabitants, in August, in September, and in October 1775, to enable them to put the crop in the ground, through the medium of the nabob's son; for which he said he had their bonds, which were not in his own, but in somebody's hands to be registered; they are never produced; the other two articles of assignments, are for old debts upon the Tanjore revenues. Observe the assignments bear no date: and they are never produced. He says that one is an order upon Puttestah; and one on Papanashem; they have no dates; the money advanced to the nabob might have been taken, from Benfield's story, as advanced from the January or February in the course of that year; but that is quite another question: but the assignment given to him, by way of mortgage, could not be the crop of corn, but the mortgage of the last year's grain; but it is the corn then in the ground, that is claimed; the right asserted, is to keep that crop, in consequence of the right of the nabob; which was afterwards affirmed by the vote of the council, no doubt when they stated what the council resolved: it was not contended so impudently afterwards, for they say in one of their letters, they only recommended, they don't mean to enforce. Good God! If they only meant to recommend, and not to enforce, what meant that ungrounded resolution of theirs,—the first of the three motions, made upon the claims,—made upon Benfield's claims, that the nabob had a right to the crop of the year? I cannot forget that question was put, and they have affirmed it, without examination or evidence. And if they affirmed it, it must be by the argument of Brooke; but upon no argument that I can conceive, should they have affirmed it. To follow the progress of what I am going to state, the sole cause which affected the whole, was the assertion they then made, that the nabob had a right to the crop in the ground, sown in 1775 (and then lord Pigot arrived,) to be reaped in 1776. In the nabob's letter, when he talks of having made assignments of that crop, he makes use of it as an argument and reason, why he should be allowed to reap it. He is called upon, before Benfield appears upon the stage, to explain what these assignments were, to whom made, and to give an account of the receipts and disbursements upon account of Tanjore, to shew how the account stood; he never gives that account, but talks obscurely and mysteriously

about the assignments, though the question was put to him by the council; he never answers, in subsequent letters, when they call upon him to explain them. You are to judge, gentlemen, when the business of the nabob was brought forward in the shape of Benfield's claims, why Benfield's claims should have better fortune with the council than the application to the same effect and purpose urged by the nabob, from December to March, which seems to have had no effect. They did not avail in the mind of the council; they did not prevent the orders to lord Pigot, to go to Tanjore, the state of the crop requiring he should then go; by the orders of the 29th of May, the resolution of the council then was, the assignments of the nabob to Benfield are inadmissible,—how came Benfield to be again consulted? I stated in the opening all I could hear of Benfield; with this confidence, that if I had been inaccurate in stating it, I should have an opportunity of being set right, by a possible conversation with Benfield. Can any body, who heard me, conceive that it should not occur to the defendants to judge, and say, whether they did or not think proper to examine Benfield? and the reason why he is not produced is clear. In all these proceedings, during the whole course of them, Benfield being the origin of all this evil; the disputes springing out of Benfield's business; he now in England; is it possible to imagine, if Benfield could have cleared up the matter favourably for the defendants, his testimony would not have been used upon this occasion? Mr. Dunning was perfectly right, to say he was not counsel for Benfield. I stated it fairly; and urged the necessity of calling Benfield; you will judge how far I put it justly; I have not put it unfairly. Benfield is existing here in England, and capable of being produced to be called as a witness if they pleased; and he is not called to explain one of these transactions, or to wipe away the inference, that arises from so enormous a claim as 250,000*l.* starting up in the person of Benfield, and that claim succeeding to procure not only a recommendation to the rajah in his favour, but other resolutions of the board in his favour, and a decision in favour of the nabob;—not the very moment, but almost directly as soon as a majority was got together, to procure a decision upon the nabob's claims, which, notwithstanding direct and repeated applications from the nabob, before they had constantly refused! When I see those facts staring me so broadly in the face, is it possible for me to entertain so very milky a candour upon this business, as not to discover the fact? or is it possible for your minds to be so far divested of all reason, as not to conclude it was the easiest of all possible matters to put assignments in the hands of Benfield? If they prevailed, they dragged after them the possession of the revenues for another year; they had that effect; whether

they pushed the matter afterwards, was not of such consequence; that dropped in the course of the argument; I don't know whether the fact is so or not; I believe the matter rested, and has not taken effect in the Tanjore country; for what happened afterwards was the effect of the events not foreseen at that time. However Mr. Benfield's claim prevailed; they were adopted, and had the effect with them to substantiate the nabob's claims; they are decided directly, by a resolution the nabob had a right and title to the revenues of that year. To the resolutions upon the head of Benfield's claims, succeeds the contest about a person to go to Tanjore.

Give me leave to observe upon what you have heard in this case, upon that head, it is very extraordinary; till now it did not seem to me to be in the compass of men of the most mischievous imagination, to devise a method to put a government in confusion, and overturn it upon so simple a matter as a question of who should be appointed to go to Tanjore to attend the rajah at this particular moment. I before stated, that it appeared, they were to carry recommendations to the rajah, though they had voted it was the nabob's right; so long as they could carry it civilly, they meant to do it; therefore, say they, we meant to send a recommendation to the rajah to shew attention to Mr. Benfield: if they stayed so long as to let the rajah get into possession of the crop, liable only to representations in behalf of just claims that might be made upon it, they knew there would be an answer to them; they knew there would be no possession taken, that the grain might be disposed of, and the matter would run into length, and might terminate afterwards in a reference to the directors at home. Their object was the keeping possession of the rajah's country; to conduct such a scheme, therefore, it was essentially necessary, that they should endeavour to send a man of confidence, to talk proper language to the rajah; as that was a matter upon which the whole hinged, whether the orders of the Company should be carried into complete execution, or not; whether the matter should be with the rajah or the nabob. As to the crop of 1776, the whole of it, they thought, was perfectly dependent upon that: their object therefore was to send col. Stuart, and to prevent Mr. Russel from going. As to col. Stuart's going, my learned friend suggested very good reasons and made very ingenious comments upon col. Stuart's letter, respecting his reasons, why he should prefer the command at Tanjore to Vellore, and referred to the imagined dangers, hinted at in one of the minutes, to the supposed designs of the French in concurrence with Hyder Aly, the rajah of Mysore. If they had had better to have given for adopting col. Stuart's object of going to Tanjore, they would have given them; unfortunately for those reasons and

my learned friend's observations, the reasons they adopted were false; there was no alarm from the French, the true reasons were of another kind, there was not any intimation of Tanjore being a post of honour, and the most important situation in that respect; yet that was the argument urged upon the other side. If this importance were true, so far as it regarded the defendants in a political sense, it was not in a military sense so important as Vellore; but the other sort of importance was quite of another kind; there is no doubt, under their command at Vellore, there were 500 Europeans, at Tanjore only 100. Col. Stuart states, as second in command, he was entitled to the post of Tanjore if that was not supplied by sir R. Fletcher himself, intimating that which never took effect,—what he thought,—that they had a right to send more troops there. What necessity was there for sending him there, whilst the force at Tanjore was so unequal to the command of an officer of col. Stuart's rank? sir R. Fletcher's reason is not so well applied upon this case, as my learned friend's, which was extremely ingenious; but sir R. Fletcher's is not among the nature of those to which we ascribe the term ingenuity, it is only finding a false reason when an ingenious one could not occur to him: sir R. Fletcher reasons in this manner; he wishes to have col. Stuart's sentiments regarding the state of the fort and country of Tanjore, with respect to their defence; particularly at a time when there is intelligence of armaments coming from France. Lord Pigot answers it, and says he should be glad to have col. Stuart's opinion upon the defence of Tanjore; he wished to have an officer of his experience to report what the state of the defences was; but that imagination of an alarm from the French,—which was only an imagination in the first place,—was deserted, and all the rest of the reasoning goes upon the recommendations of the commander in chief. One of the gentlemen takes notice, that it is the Company's orders attention should be paid to the recommendations of the commander in chief; however, it was determined Mr. Russel was not to go. And it was stated to you with great candour,—my learned friend feels observations of that kind, which are only to be conducted with the utmost degree of candour,—that there was no ground for lord Pigot's pressing for him to go only for a few days; those reasons have been explained to you; and not for the reasons that occurred to me and my ingenuity only, but the effect it would have upon the rajah from being uninformed and prejudiced, was suggested by my learned friend, and some other reasons of a private nature, why it was expedient for Mr. Russel to go to Tanjore. Now, gentlemen, after all that has been said upon this subject, perhaps I do not hazard a very improper conjecture, or a wild one, if I conclude, positively and certainly, that you may, many of

you, be of opinion that all that has happened at that place, at the time it did happen, could not have happened without the influence of those gentlemen, and inducements operating upon the one side or the other,—I ask no more. I think it probable you may be of opinion, that the consideration of money may have weighed upon this business, on one side or the other. As to ideas of imputation that the members of the council might be supposed to have entertained, and the inference they might draw from Mr. Russel's going to Tanjore, you will judge how they are founded, from the conduct of both sides. I offered Mr. Monckton, the intimate friend of lord Pigot, his son in law, acquainted with every transaction, even the most secret that could be discovered by his papers, who performed the part of executor,—I offered him, upon the most public examinations on that head, to shew lord Pigot was in that part of his life, as well as every other, superior to all things of that kind, where his duty was concerned.

Upon the other side, they did not produce Mr. Benfield. Now I repeat it again, I cannot conceive it possible for any man to imagine, that in this case, connected as Benfield is with it, Mr. Benfield should not be called upon to give evidence, if they had thought it expedient for Mr. Benfield to have stood the examination.

Mr. Dunning. My learned friend seems surprised, that I did not call Mr. Benfield. If Mr. Benfield had been here, I should have called him. Mr. Benfield is not here: it is impossible for human ingenuity to find out from the information, any thing concerning Benfield. I myself confess my idea in the course of the business, in a charge like this, where neither the name of Benfield appears, nor his claims, directly or indirectly, nor charges of corruption, of any sort or kind whatsoever, against him, it would no more occur to me to call upon Mr. Benfield to be produced as a witness, than to send for the nabob.

Court. To be sure there is nothing in the information that imports it.

Att. Gen. Is there nothing in the information that leads to the name of Benfield?

Court. Not to a charge of corruption.

Att. Gen. Is there nothing that leads to it?

Mr. Dunning. There is no such charge in the information.

Att. Gen. To restore Tanjore, is to restore the revenues of it; to keep possession of Tanjore, is to keep possession of the revenues of Tanjore; they are convertible terms. It is impressed upon my own mind, whoever examines these facts (you see we have upon all sides carefully read these proofs) must have been aware how material it was to the future conduct of this business, to shew the legality or excuse upon the one side or the other; and to shew the conduct of Mr. Benfield, from which all the subsequent matters originate. If they were not, I am the idlest of all idle

reasoners, and deserve your reprehension. If you cannot find an analogy, between the claims of Benfield and the subsequent conduct of these defendants, I have been labouring idly indeed, and to little purpose; and must beg your pardon. But if you perceive, as you must, throughout the whole of the business, that which in the information is strictly within the letter of the charge, what they did to obstruct my lord Pigot, when he was proceeding to put into execution the orders of the Company, was done in the instance I mentioned;—Mr. Benfield asserting these claims, and the defendants permitting them to take place in the prosecution of some scheme;—in making it a point to send some particular person to Tanjore;—I have been talking improperly to you, when I say that was the whole of the charge; the charge in the information, is assault and imprisonment of lord Pigot, qualified with these observations, that it was done to obstruct lord Pigot in doing what he was commissioned to execute: from what motives, with what intention, what the principles were operating upon their minds, it is said I am going out of the charge, when I am stating that. Though corruption is not stated, if I prove a criminal act is done, and the mind in doing that was acted upon by corrupt motives, it is a great aggravation. And, though it is not distinctly charged in the information, the motives with which the acts of violence, charged to be committed by the defendants, were done, is a matter for your consideration. It undoubtedly will weigh much, both in judging the nature of the crime, and the defence, and the nature of the punishment to be inflicted upon them. I therefore beg you to bear in mind the object of lord Pigot's commission, how that was obstructed, first by the nabob's interposition ineffectually, afterwards effectually by the interposition of Benfield, of whom so much has been said, whom the defendants, if they thought his claims proper, did not think proper to call. Benfield is in a situation that he might have been produced; that is all I state; and I leave it to you to judge, and to draw an inference from his not being produced.

Matters have been gone into in this cause, of which I don't now go into the detail, of facts, and the narrative which was stated of questions which arose in the month of May 1776, and from that time downwards, in which debates arose upon the extent of the president's authority. Upon that, let me beg of you in the first place to recollect, with regard to the fact, it is said, what were the authorities lord Pigot claimed? It is said, in one instance, he claimed a power of putting a previous question; in another, he objected to any other person's putting a previous question. It certainly was new, as lord Pigot said; and I think it is a little incorrect, to state lord Pigot himself had given an example of it. Lord Pigot said, at the meeting on the 14th of June, and insisted, he had a right to put

his question before Mr. Mackay. Mr. Mackay insisted he had a right to put his question before my lord Pigot, in consequence of an adjournment to take into consideration some motions he had to make, not upon a specific question stated, but only upon an intimation in the minutes by Mr. Mackay, that he had a question to put.

Mr. *Dunning*. What I alluded to, was upon Mr. Mackay's first motion, after the motion was made upon what lord Pigot proposes.

Att. Gen. We are exactly upon the same point; mind if I don't state it. Lord Pigot desired he might put his question first; Mr. Mackay says, no; I have a right to put my question first: then lord Pigot said, the only way to settle this, is to put the question, whether Mr. Mackay's question shall be put, to determine whether Mr. Mackay or lord Pigot had a right to put the question.

Mr. *Dunning*. Is not that in the most express terms a previous question?

Att. Gen. That is in terms a previous question, but it turns upon another circumstance.

Court. Nothing turns upon that; before they had done, he in terms refuses to put the question.

Att. Gen. The observation merely applies to this.

Court. But it does not require exactness.

Att. Gen. I don't mean to state, that he would not put a previous question as totally new: but it is a little material to state that at the time he objected to sir R. Fletcher's previous question, not an instance of that sort had occurred to him. Let me appeal to lord Pigot's understanding upon the subject; I am certain he would not have stated a thing to be new in a settlement where he had done the thing himself before. This was a question upon a priority between two questions; on the mode of stating it, it was upon this point, whether Mr. Mackay's question should be put before the president's, so it was understood at the time by the gentlemen. Lord Pigot however, it is said, objected to putting a previous question. Now I really cannot conceive this was a dangerous or an alarming exercise of power upon the part of lord Pigot; as a majority could not have much difficulty to encounter a previous question, lord Pigot did not gain much by asserting it was a novelty; they would have immediately put the other question. I don't conceive that the assertion upon the part of lord Pigot, that a previous question was new in the settlement, and that he would not put a previous question, was such an innovation and usurpation upon the part of him, lord Pigot, as merited deprivation, imprisonment, and death: less might have done; a less degree of censure was required for such an instance.

Then lord Pigot makes other assertions; he asserts, too, that he has a right to open the business; he states what I believe to be un-

questionably true. In the course of his long experience in India, the business was always opened by the president. There was no instance, I believe, in lord Pigot's former government, nor ever any where, where it was not such a scene of confusion whenever the contrary happened. There is a degree of respect due to the president, which would naturally make every member of the Board wait till he brings on the business. It is the method, I understand, in Leadenhall-street now, that the chairman is the person to bring all the business before the Court of Directors.

Mr. Dunning. I understand it is otherwise.

Att. Gen. I say it is a matter of decorum; I don't state it as a matter of absolute right; I understand it to be a matter of practice, and I understand it to be a matter of decorum. I know, in point of instance, a very hostile committee carried it to such a pitch, that they forbore to have questions put, when certain of them were present, and persuaded the chair to move questions when they were not present; the business proceeded, being supposed to come from the person in authority. But, whether I am right or wrong in that, I am ready to give up the point, and admit lord Pigot wrong, notwithstanding it having been his constant practice in all his time; I still conclude I don't think it deserved deprivation, nor the imprisonment in which lord Pigot died. Less censure might have been inflicted upon him; it does not strike my ideas, that it would amount to a justification of the defendants for the consequences that followed. The ideas of the powers lord Pigot had, as president, I apprehend are not very disconformable to those laid down by Mr. Hastings, laid down in Bengal: only Mr. Hastings having a little more discretion, and a little more practice in the forms of business, asserted them in a different manner. Lord Pigot contended, what? not that he had a direct right to controul the proceedings of the council; lord Pigot did not assert that he, as president, was a self-moving integral part; that he could act without the authority of the council; he never asserted that he, with the minority of the council, because the president was one of that minority, could carry deliberations into execution as acts of council;—but asserted this, which is precisely what Mr. Hastings asserted, he could stop the acts of the majority by going away and leaving the room. Says Mr. Hastings, I leave you to act as you please, gentlemen; you are without a president, you may go on as private persons, but you are not a council. Lord Pigot tells them not in so advantageous a manner, not so able a method, but bringing the question palpably before their eyes, he tells them not how he was to exercise the right, but that he understood he had a right to do it; he might have exercised it by withdrawing himself; but he says an act of the majority of the council, without the president, is not an act of council; and therefore don't precipitate it; and

he reasons, he expostulates with them, he says to them, don't put the question; don't involve yourselves in issuing an order, in which I give you notice before-hand you will not have my concurrence: I apprehend the acts of a majority of the council, without my concurrence, because I am an integral part of the government, will not be an act of government.

That was asserted by lord Pigot, and though not asserted in the same manner, was individually the same claim as Mr. Hastings asserted in the case of the act of parliament which intervened; my lord Pigot proceeding upon what he understood to be the constitution of the Company:—the one meant to guard his power by the act of withdrawing and then pretending they did not constitute a council; the other staid and defined the constitution to them, but did not do the act by which he would have shown his power, by withdrawing himself;—but he put himself in the same sort of predicament with Hastings; and whether he withdrew or staid, he asserted he had in him such a power, which was the same thing as if he had said, 'If I go out of the room you are no council;'—it would be trifling exceedingly to say it was not the same claim; or to say that by the conduct of the one, he has a power because he said, I can turn the door upon you. Was it not full as sufficient when lord Pigot says, in the room, 'Gentlemen, I tell you here in the room you are no council,' as if he had said it, when he had got out of the door, in the fortress Mr. Hastings intrenched himself? But having said it and not having opened the door, it seems, has occasioned all the consequences that ensued, and it is said he merited all the conclusions drawn, and all the steps that were taken by the defendants in this cause.—Before I come to state particularly what those conclusions are, and the act of suspending the two councillors, I must go on upon the circumstances of the arrest; I cannot suffer them to pass without a few observations upon them.—It has been said, to the circumstances of the arrest there was no material evidence.—It is admitted he was arrested; we have called a postilion; and my learned friend treated his evidence as a subject of great contempt, and indulged himself in it to a great degree (as he thought very properly, with respect to this cause) to endeavour to take off from your minds that serious mood, in which you hear such a cause as this, by turning it to a little pleasantry upon the postilion we examined. But are the circumstances of that man's evidence totally immaterial? can I, can you as jurymen, forget the business of colonel Stuart, to whom all the power was delegated, touching the arrest of lord Pigot? Is it of no moment what time was fixed upon for his arrest? Can you have so much charity as to conceive, when so many persons were made to attend by positive orders, that this measure was taken without communication, and without any other person's

confidence, or knowledge that he would have such orders to carry into execution? Is it therefore so indifferent a circumstance, to take notice of the time in which this person was sent to them? and is it quite nothing, that Mr. Benfield kept his chaise and horses in waiting, for this purpose? to be sure it was a very pleasant matter, to say it was an easy post chaise! I did not think my learned friend would have thought it right to have pushed that matter quite so far, when speaking of such a man as lord Pigot. We are obliged to him for his tenderness and humanity; he says it was no hardship to be carried, provided it was an easy post chaise, to a comfortable place of confinement; that such imprisonment was no great confinement, if he had his friends about him; and though there was an officer guarding him, in view, really it is nothing, if the humanity of the officer interposes, and he is so good as to leave a parent to discourse with his children, without interposing, and hearing it. And the Mount is a very pleasant place, and (if it was in an easy post-chaise) a journey to Chingleput would do him no harm; upon the contrary it would be very pleasant, especially if it was taken at night, for that is the coolest time at that time of the year to travel in.—This is the kind of defence set up for the imprisonment of lord Pigot, after that imprisonment has terminated with the death of lord Pigot. Gentlemen, it would be sporting too much with a question of liberty, to say imprisonment is nothing, provided a man can have a good dinner, and be in the company of his friends, and have ladies to visit him; that the room he was shut up in was 20 or 30 feet long. I have a better opinion of you, than to think by your verdict in this case you will shew countenance to the circumscribing any Englishman's liberty, much more lord Pigot's, in a space of 30 feet. You will not think he could hold himself extremely well off, to be from August 1776 to May 1777, left in a place 30 feet by 20, in good company, with only an officer to guard him. This brings me to another circumstance, which is the letter written upon the 25th to major Horne. Now let me beg of you to consider it, and I will state it with no exaggeration, and no degree of emphasis; you will consider how the circumstances of that letter, raise nothing but common sensations in your mind; notwithstanding what my learned friend said, 'it was out of delicacy to lord Pigot's family, that the time of his removal was chosen to be at night.'

Delicacy to lord Pigot's family!—Yes—They were to know it in the morning.—It was great comfort, no doubt, to the tender feelings of the ladies of lord Pigot's family, that they were not to be shocked with the scene of his being taken away in the day time; they were to learn the next morning lord Pigot was removed, in the dead of the night, under the care of colonel Eidingtoun,

to a place they knew not where; nor could they know, for secrecy was enjoined, and the officers were not permitted to tell to what place they were to carry him. If it had been the case, that he had been removed then, what pretence would have been made to quiet the minds of lord Pigot's family? You see the absurdity of it. If, by an attempt to take lord Pigot, any disturbance should ensue (that did in fact ensue) were their fears to be less alarmed, their minds less agitated, or their feelings less roughly handled by that circumstance occurring at the hour of rest, when they were going (as Mr. Monckton said) peaceably to bed, than if it had been broad daylight and the circumstance explained? The circumstance of the night, therefore, for the removal of lord Pigot is unaccounted for, by that thin and empty pretence with which it has been attempted to cover it. It is said, the removal of his lordship was upon an apprehension of danger, and so the letter states; let me beg of you to turn in your consideration, whether the pretence of the letter was real? it certainly was not real;—whether it was imaginary or not?—upon the contrary, it was totally affected. I say it was totally affected, for they could not imagine it to themselves, from this very plain and obvious circumstance. The letter is written upon the 25th, the danger that it mentions, is a danger supposed to arise from what Mr. Claud Russel had done upon the 23d.—You will attend to that circumstance, Mr. Claud Russel was before them upon the 24th in the morning; and was examined upon the 24th. Upon the 24th they sent an order to major Horne, not implying any alarm; on the 25th, they write, 'people are alarmed by an account of Mr. Russel having made a disturbance;' the alarm is instantaneous and takes place immediately, the precautions to be used upon it are instantaneous. They write upon the 24th, a letter to major Horne, in which no mention is made of any alarm, no notice taken of what happened in regard to Mr. Russel; and it is only a common warrant to keep lord Pigot in his custody, he having been delivered to him by Mr. Stuart. The alarm therefore was not conceived on the 24th; it could not rise in regard to Mr. Russel, therefore I argue, and trust you will think justly, it was only a pretext taken up afterwards, at a time when all was quiet, and when they were satisfied in their own mind. According to Mr. Monckton's evidence there was not the least intention upon the part of lord Pigot to raise any disturbance, and there was a recommendation given by lord Pigot, before that time, for his friends not to make the least disturbance or raise the least commotion. I did congratulate myself that colonel Stuart's name was not to it; but my learned friend says, there is no doubt a passage in it was put in upon the instigation of colonel Stuart. There is no proof of that, and I am convinced it is not so; my learned friend's information is

E. I will demonstrate the impossibility

In the first place, there is not a passage ~~that~~ could have slipped in by the suggestion of any body: It is very obvious the whole of the letter was written for no other purpose than to convey an insinuation, to give them a pretext for the orders they were sending, and to carry that particular postscript. The prior part of it is this, 'Mr. Claud Russel having that night made attempts to get the main guard under arms, and as he and his associates may endeavour to send letters to the out garrisons, we request you would endeavour to prevent their conveying papers to lord Pigot's hands, to be signed by him, or their holding correspondence with him whilst he is under your charge, unless in your presence.' That is the prior part of the letter; as your last resource in any attempt to rescue lord Pigot, his life must answer for it, and this you are to signify to him.' The postscript is this, 'The nabob has been applied to for a party of horse to be put under your command, and they are for the purpose of conveying quick intelligence to us, and for such other purposes as you shall think necessary: we trust to your making such a disposition of the force under your command as to prevent the possibility of a surprize, or the success of any attempt that may be made by lord Pigot and his associates.'—And that is the whole of the letter. I say, they could have written this to major Horne, for no other purpose but what was meant to be conveyed by the latter part of the letter, and the postscript. Upon the 24th major Horne had an express letter from colonel Stuart, containing, *totidem verbis*, the very orders conveyed in that letter of the 25th, which was, not permitting any person to correspond with lord Pigot; the letter was to be stopped, and the person dismissed with whom such conversation was held; and lord Pigot was to see no person without the presence of an officer: these are, *totidem verbis*, to the same effect, distinctly conveyed to him in the letter of the 24th, which is the letter from colonel Stuart. Now no person could have suggested the paragraph, as necessary to be put in that letter of the 25th, which is a demonstration it could not be written for any other purpose but the expression at the close of the letter, and whatever was meant to be conveyed by the postscript of that letter.

Gentlemen; It is said upon what I insinuated to you upon this, it would have been a strange and an uncommon device. I could refer my learned friend to an incident of no very remote historical date, in which just such a device was carried into execution, and the person suffered death in consequence of a supposed scuffle, a supposed intended rescue. Something like a scuffle was apparently made, and in the resistance of that supposed scuffle, the person died. I dare say he knows the instance I allude to. The idea is not quite new to him. It is not entirely of eastern growth,

though in some degree participating of Asiatic manners; but it did not actually take place in that manner, from contriving a scuffle as accidentally, when particular orders were given to the officer of the fort who had the prisoner in custody; and in taking care of the prisoner, every thing happened that might in the imagination of a person have happened here. It is said it was repugnant to their interest; to their true interest undoubtedly it was, but so I trust it will be found a great many parts of their conduct were equally repugnant to their true interests. To judge what you think agreeable to their interests, you must put yourself, not in the situation in which the parties stand now, but the situation in which the parties stood at the time. Now what was the situation the parties stood in at the time? A power suddenly usurped, I say an illegal power, and usurped by the grossest of all impositions, not certain by how long a tenure that power would be held, I am afraid I cannot say, for the honour of human nature: (it is not so common an idea that the persons of rulers and their deputies ever honour one another as they ought to do; but was it very repugnant to their interests, and so conceived at the time when it appears they had the idea of a possible homicide being sheltered by law? that was the idea floating upon their minds. My learned friend said it was against their interest; and he should have had no such ideas of homicide in his mind. It never would I believe enter into a heart so pure, so benevolent, and honourable as his, to enter into such a party; it was all their own ideas, and no part of his: I am sure you cannot hesitate a moment. After finding it was their own ideas, they consider the killing of lord Pigot might have been an act sheltered by law, that was the circumstance alluded to in the letter; it was wrote without passion, at a time when they were cool, it was the act of deliberation. Gentlemen, I am only desiring you to consider the thinness of the pretence; consider the time of executing the orders; upon the least alarm, the orders were to be put into execution. That was the reason of writing the letter to major Horne, and putting in the postscript to that letter, at the beginning of which they mention the circumstance of a thing being likely to happen, which, in fact, had happened a day or two before, and of which they knew the effect. Considering all this, you will judge for yourselves, and see whether you think it an uncharitable conclusion that I make. If at that time a scuffle had ensued, and in consequence of that scuffle, the best blood in India had been spilled, what sort of defence could have been made for it? Then I was reproached with having stated a circumstance pathetically, which I will restate and state it very dryly and coldly to you; lord Pigot was, under confinement, guarded in the way, and with the mitigations you have heard; but he was under a confinement which undoubtedly preyed upon his mind,

down to the 24th of April 1776, when he had a moment's release; but the guard was put on again in the course of his illness, and he died the prisoner of Stratton. Major Horne was Stratton's officer, not to Stratton was the application made, but the family applied to major Horne for the body of lord Pigot; I have stated the circumstance, and I leave it to your feelings as men, without any comment upon it.

I have troubled you with all I intended to state by way of observation upon the facts. It is stated to you, and a case was stated to be put by a great authority; that the great object of enquiry, upon all such trials as these, is the heart of the party. Upon what occasion it was said, is not within the compass of my knowledge; I am sure whenever it was said, it was said with perfect propriety, and the application perfectly just; but upon the present occasion, the application fails exceedingly. The motives of men's minds, excepting very few cases, cannot be traced by evidence; the heart of man is only known to the great Searcher of all hearts; the hearts of men are not the subjects of human tribunals, unless their actions are oppressive: if they have acted injuriously to that community of which they are members, they must be answerable for it; but if in the government of that community any persons act oppressively and injuriously to individuals, it is in vain to defend them upon a supposed goodness of heart, and to alledge pureness of motive; such enquiries would baffle all efforts of human justice. Men must be accountable for their actions; and they cannot avail themselves of an appeal to the testimony of their own hearts, which no man can know, and which cannot be brought out in any degree of evidence. An attachment to Mr. Stuart was thrown out, and it is admitted that might be the motive. If that was the motive, it was a miserable one indeed, to involve the settlement in so much confusion, which, but for that one attachment, might have rested in peace to this hour. But I leave you to consider, whether the attachment to Benfield might not be the more cogent, and the attachment to Stuart a very secondary consideration. It is said they disclaimed acting upon private motives, and they defend themselves upon public motives; but what their defence *really* is, to this hour, I confess myself at a loss to understand. My learned friend, possessed of the great distinguishing talents he is, has not in any part of what he has laid before you, unquestionably very ably and ingeniously,—he has not in any part of it (unless I have much misapprehended it) stated any distinct clear proposition, by which he proves the act they have done is to be justified. I will go through it with what I apprehend to be the things alluded to by him, as making up what entitles them to a justification, upon which he hopes your verdict will acquit the defendants of the crimes charged in the information. In the first place it was pressed, and I think wisely, to be a violent

and illegal act of lord Pigot to have upon the 22nd suspended, in the manner he did, Mr. Stratton and Mr. Brooke. I am perfectly ready to admit that it was a violent and illegal act, upon the part of lord Pigot, to have suspended Mr. Stratton and Mr. Brooke; let us see a little what are the consequences of the admission I so readily made. Is the constitution dissolved by it? Consider what constitution we are talking of: it is a delegated authority, in which all the parties are subject to controul; in which all are subject to superiors; in which if mischief happens it can be but a temporary mischief. I have said before there was no occasion to dread violence from lord Pigot's temper. We have the best evidence of it; Mr. Monckton said, with all the injuries fresh in his mind, lord Pigot conceals the just motives of his warmth, and was abundantly acquiescent to keep the peace of the settlement, desiring his friends to make no disturbance, and to prevent the least commotion; he was not a man likely to proceed to any extremity of personal violence. It is said, his council were suspended illegally; I have known instances happening before at Madras; an officer or a council have been suspended illegally, and such council have been restored on application at home by Mandamus: does that make a dissolution of the government because one or two are suspended? It is said, if one or two are suspended, all may be illegally suspended. I cannot argue upon those circumstances; they have not waited for that extreme, but if an extreme case would justify people acting under a delegated authority, they are not to appeal to God Almighty; they are amenable to another court, if they do wrong; and that wrong may be rectified, if they wait for a message going to Europe and returning. In the present case that did not happen, till lord Pigot had made a proposal, which I state again, left them without all excuse not to adopt as a temporary mode, the conciliation that would have prevented all the dissention and mischief that followed. But lord Pigot's proposal amounted to nothing, it is said, for if he did refer the matter to the directors at home, in the mean time he would remain in the possession of the rights he claimed. I take the language to be plain, 'don't send Mr. Stuart to Tanjore; if you do, let me send Mr. Russel too.' Let that be put out of consideration, and all the rest, let it rest here; he having repeatedly, again and again, declared that was the thing he would do in the extremity of the case: as to controuling them by withdrawing himself from the majority, by making them a council without a president, he does not take that step; but in the extreme case of necessity desires all his powers may be referred to the directors; and it was too uncandid of them, not to say worse of it, for them not to accede to it. If those proposals had been acceded to, none of those questions would have been agitated again, lord Pigot would have called

distant councillors.—No, that was not what they wished. I am willing to admit that lord Pigot acted illegally in suspending those councillors; that was not a thing that approached towards a conciliation; upon which it may be said lord Pigot did not make all the possible advances he could; it was impossible for him to make more than he did. And I have heard it advanced, and yet I don't believe I shall hear it advanced as a principle of government, that for an illegal act of the president, without due form, contrary to the opinion of some members of the council, that it warrants those council to dissolve the government and imprison the president;—It is said (and I beg it may not be understood as imputed to my learned friend),—it is thrown out in that letter from Bengal; a great deal of notice is taken about their being a majority; and throughout in every passage of it,—You being a majority, and while you the majority do so and so,—which seems to infer their being a majority, was a defence for what they have done. If it was so in the opinion of any body that signed that letter, it was an opinion founded upon gross ignorance, and palpably misunderstanding the terms, there was no such thing as absolute majority. Majority supposes a minority, they are opponent parts of the same council; but those who because they are a majority exclude from their council the rest of that council who were of the minority, they are individuals, conspirators, ruffians,—not a council,—not a majority,—to say they were a majority is ridiculous, and a perversion of language, a play upon words,—to pretend to qualify themselves with the phrase of majority:—While they continue to act in council, under the authority of the president, they are a majority and minority of men deliberating and discussing and voting; but those who call themselves a majority taking upon them to act by themselves, to imprison their leader, to imprison the president who was the head of that government, and to suspend the rest, to make themselves masters of that government, are doing unlawfully, and unqualified under the title of majority or any thing else:—And the council at Bengal talk strange nonsense when, in every paragraph, they set up a majority. I beg their pardons, they only talk ignorantly; they state in their letter, they are not informed of the train of facts which led to that conclusion; neither were they insensible they were not informed of the series of acts that led to those effects. And they don't appear by that letter to know, that the power had been usurped, and all the consequences that followed. But then the illegality that followed in suspending the two councillors; the necessity of the state requiring to overturn the government; to impeach the councillors; and God knows what acts there were done upon that ground; they mention all that, but who tells them so? It is Mr. Stratton—what was the first act which others mention? that lord

Pigot by his authority alone had suspended Mr. Stratton and Mr. Brooke. I say that was illegal, but was it not equally illegal, upon the part of these gentlemen, to suspend Mr. Russel and Mr. Dalrymple? they had called upon Mr. Russel, and asked if he acknowledged their authority—he did not. Mr. Dalrymple was not called upon, he thought it hard he was not summoned; there was an illegal suspension of Mr. Dalrymple, which is gross and palpable upon every idea. The next day they suspended Mr. Lathom, I mentioned Mr. Lathom as a person newly arrived from Caddalore; he ought to have been called to the council; there was no legal council without him. Mr. Stratton's council was no legal council, without Mr. Lathom; a council consists of the members present upon the spot, ready to attend when summoned to attend, when necessary to the constitution of the body; but Mr. Lathom was present in Madras, he had done no act, he had given no vote, he had neither been of one party nor the other, yet he was not summoned.—They say lord Pigot did not act legally! Dare they talk to me of the illegality of lord Pigot, or to state themselves acting legally, and under the colour of law, when they are meeting privately, not summoning the member of the council untainted by the former measures, and two days after suspending by their own authority that member of the council uncalled, unheard, and unexamined, in his absence? That is the wicked illegality that accompanies all usurpations; and by the same arts that the power is got, those grossly illegal usurpations of a government are maintained, in the same manner this has been maintained by their own illegal measures, and then they have the daring confidence in a court of justice,—I will not say to urge it as a defence, but to throw out something like a defence,—to get an idea to be nursed and brought up to be something that is stated to be a defence in point of law. I dare say you will treat that in the stile it deserves, and then I shall hear nothing like a defence, in the way of a justification for such gross illegalities, and we shall hear no more of such acts; and this contagion, which arose in Asia, will not be carried into future examples, overturning the bonds of society, and turning all into chaos by bloodshed and every consequence that can attend upon such proceedings. It is said there was a collateral necessity for colonel Stuart's going to Tanjore, was that an object to overturn the whole government? was it too much to comply with lord Pigot's request? Had they resisted such a proposition as I have now stated to you, had they been intrusted with what operates upon common minds, and had a proper respect for authority, a proper regard for the public, more moderation of temper, or any thing fit to possess the minds of men with a proper degree of respect for those to whom the power was delegated, they could not have refused to

have complied with the repeated proposals of lord Pigot to refer to the directors, and to stop all these proceedings, and say no more of it, that he would adopt a middle measure, that middle measure they thought would cause delay, and instead of that they hurry on and take advantage of the act lord Pigot had done, in suspending two of the council, which act they sanctioned by their own example. They proceed,—to what? Imprisonment of his person: will they justify that? What I stated in the opening, I will repeat again; I conceive nothing but that physical necessity that would have justified the putting a pistol to lord Pigot's head, upon the moment he had done it, could justify the imprisonment. There was no man who had a right, while the government stood, to put him under any confinement: no custody could be legal: no officer could be warranted to hold the governor in prison. Nothing can justify that imprisonment; nothing can prevent us from receiving full satisfaction by your verdict; there can be no attempt to palliate it; but such a defence as that for every one of the persons putting a pistol against lord Pigot's head, and saying, now there is a physical necessity for it, you destroy me, or I you. This is nothing like that case; and nothing but a case like that, can afford any defence for these defendants. Having said so much, I will not trouble you upon the circumstance of those opinions sent from Bengal, which are very imperfect; and without proper authority they had no right to give an opinion, direction or controul upon the business. It was said to be the opinion of four men who never agreed upon one point before; that only proves, they are all, by the express orders of the Company, to sign letters, if letters are sent. It shews it is the opinion of the majority of four—if the letter proves that, it proves nothing more. I had proofs sufficient, if I had been prepared for it; there was one gentleman, Mr. Francis, who it is said signed it, declared it was not consistent with his opinion at that time; and how it came to be the opinion of the others we could give good evidence; but, be that what it may, it is a loose uncertain vague opinion, and not strictly justice with respect to what was done. I will tell you to what it is in that respect, I apply the determination upon their part; it was to prevent a suspension of the existing government; in that they were right, sir Edward Hughes was right; all are justified in my opinion; they thought it better a bad government, though usurped and illegal, by Stratton and his council, should be held, than that there should be a confusion like that in Bengal. I state that which I think has great weight in it: it was the opinion of lord Pigot; for he, by Mr. Monckton's testimony, bore his imprisonment with patience, waiting for deliverance from his superiors in England, giving it in recommendation to every friend he had not to stir, not to make the least commotion, or excite

the least disturbance in the settlement, and that he expressed at the time; I dare say, therefore, that was lord Pigot's opinion; I dare say he never had two opinions upon a thing of that kind: according to Mr. Monckton's account, lord Pigot's opinion of the soldiers was such, that their reverence for him was such, that his party would be considerable, if he risked attempting by force to regain the situation he had lost by force, and not by force only, but force and fraud, and every thing that could make that force and fraud not only odious, as it is in its own nature, but scandalous, base, and detestable.

Gentlemen, I will trouble you no farther in this case, but rest in full confidence your verdict will be an example to people in India, who are under the protection of this government; and we shall have peaceable and quiet settlements, and no revolutions attempted in the government of that country.

Let me add another word, upon the opinion of the people of Bengal; to shew of what little consequence that is, they had this kind of dissention arose twice in Bengal; once, Mr. Hastings attempting to put an end to the council by withdrawing himself, the others insisted upon going on without him, but on both sides they had at last the moderation to state their case and send it to England; they took no violent measures. In consequence of that it went no farther. Upon a second occasion, the same incident happened; upon a confusion that arose, notwithstanding orders had been sent out from here, it was thought Mr. Hastings had ceased to be governor, and Mr. Barwell a councillor; and general Clavering and Mr. Francis had possessed themselves of the government; Mr. Hastings and Mr. Barwell had gone the length to suspend the others; and the other two had suspended them; but that confusion, like the other, by the sense and moderation of the parties, was referred home to the directors and produced no civil broils: those two are great examples that such disputes may happen, without going to extremities, yet the constitution and the government may exist and no evil or confusion follow. I trust, gentlemen, your verdict will be an example to all that part of the world; and that very extensive part of mankind will be convinced, that such crimes cannot be committed with impunity.

Court. There is one thing great stress has been laid upon, I cannot see how it is before the jury upon this indictment, that is, the intention to have made away with lord Pigot, after he was in custody. In what light does that come into that information? I was thinking upon it, whatever becomes of the rest of the cause, the jury should convict or acquit of it. Is that by aggravation or how? You have no charge that he was imprisoned, with intent to make away with him.

Att. Gen. I contend it is inferred in the information.

Court. How is it applied? It is not at all

before the court. The jury have nothing to do with it. It is not in aggravation.

Att. Gen. I conceive it is, my lord.

Court. How so? In an action for damages it might be.

Att. Gen. In stating the case of an assault and imprisonment, if I state the assault and imprisonment, I am to shew all the circumstances of that assault in aggravation.

Court. Certainly; that is for the judgment of the court; but if you did not state it, you might by affidavit bring it home.—I don't see that a jury can give a judgment upon this.

Mr. Dunning. It would have been a substantive and distinct offence if charged.

Court. It would have been put as continued with a view of making away with him, and it is a point of that nature. I was turning it in my mind how to take the verdict of the jury, upon that point; but I think it is out of the case; I do it so far in justice to the defendants. I think I cannot take the opinion of the jury upon it, as to those circumstances, with regard to the taking away the life of lord Pigot; to be sure much too great stress has been laid upon them. The inference does not seem to me to follow: I should have left that to the jury if I could.

*Earl of Mansfield :**

Gentlemen of the Jury; this is an information of great consequence; it has taken up a great deal of time, and they have gone into a variety of evidence and a great deal more matter than one knows immediately how to apply; and if I can be of any use to you, it will only be to direct your attention a little to what are the questions upon this information.

It is an information charging the defendants with assuming the government of Madras, and with assaulting and imprisoning lord Pigot. There are five different counts in it, that is, five different charges in the nature of five different indictments, but I see no difference between them, except that in the two first counts the defendants are additionally charged with assuming the government, and in the three others only with assaulting and imprisoning my lord Pigot; but yet I think that will make no difference; for if there is not a justification they must be found guilty of all,—and if there is a justification for assuming the government, it will very nearly follow that there may be a justification for imprisoning lord Pigot:—so that it does not occur to me that it is necessary to call your attention to distinguish between the counts, and therefore if they are found guilty they will be found guilty of all.

* This report of lord Mansfield's summing up, is compiled from the Notes of Mr. Blanchard and Mr. Gurney.—For the communication of Mr. Gurney's Notes, I am indebted to Mr. Francis Gregg, whose father was employed as Solicitor for the Defendants in this cause.

There are three matters upon which the question depends:

First, what is the constitution of the government of Madras, with regard to the governor and council in whom the whole power is vested by the East India Company?

In the 2nd place, whether my lord Pigot had subverted or violated that constitution, so as to assume the whole to himself?

In the 3rd place, supposing that he has done that which may be called a violation of the constitution, and assuming an undue power to himself, whether it will afford any justification to the defendants for what they have done in assuming the government into their own hands, and imprisoning my lord Pigot; and in this case you must find the fact of guilty or not.

You have nothing to do with degrees of alleviation, because your verdict will follow the charge, and no circumstances of aggravation will appear from your verdict, because your verdict says the charges are true or false. When they come up for judgment, if there are circumstances of alleviation they must appear by my report, and therefore you have heard already I have delivered you from that about which a great deal has been said.

The charge of intention to take away the life of lord Pigot is out of the case.—It does not strike me that there is any evidence of such intention, but it is out of the case.

Now as to the first—the constitution of the government of Madras,—as to that, it is my duty to tell you what I think of it—and I believe I have no difficulty in my opinion about that, but if I had any originally it is now removed by the consent given, and I take the constitution of the government and council of Madras to be this, that the governor is an integral part; and therefore there can be no council held, unless the governor is present.—I do not speak of cases where there is a provision for a deputy to supply his place, nothing arises upon that here, of any particular provision for a deputy instead of the governor; but I take him to be an integral part, and that his presence is necessary to constitute the council.

And if he left the council, though he might, if it was in the middle of business and debate, be criminal in so doing, yet it would operate as putting an end to that council, just as much as if a mayor upon a stated day of election were to absent himself, it is a crime for him to do so, for which he is punishable,—but yet there would be an end of the election, because he is an integral part.

But though he is an integral part in the way that I have described to you, yet he has no negative upon a majority of the council.—He is only one, votes with the rest, and in case of equality (whether he has it or not) I see in this case he takes a casting voice.—It is very convenient he should have a casting voice—probably he has it,—he takes a casting voice, but he has no negative,—and he,

and every other of the minority, are bound by the majority of voices.

The next thing that I think is clear is, that be the course of business as it may, in decency and propriety and in custom, that the president and governor should be the man who best knows what business the council should go upon,—yet he is bound to put such questions as the majority are of opinion should be put, and not put such questions as they negative; for it would be a strange thing if no business could be done but what he proposes;—that would be a negative upon the agitation of business;—for he may propose what is liked except in one part, and then a member of the council proposes an amendment.

But as to putting the question he is ministerial; while he stays in council, the council is regularly constituted; they can say what question shall be entertained, and what shall not be entertained; and that, I think, makes up the whole of this constitution by the governor and council of Madras.

The second consideration is, what lord Pigot has done to violate this constitution.

Now, as to that, you see that after the rajah was put in possession of Tanjore, I think about the month of May, there or thereabouts, there began to be dissensions in the council. They all agreed, or at least there was always a majority until that time, until they wrote to the Company that the rajah was put into possession of Tanjore; but afterwards, there are several disputes, and the greater number of the council are one way, and lord Pigot and the minority are the other.

They dispute about Benfield's claim, as a mortgagee of the nabob, to the growing crop of Tanjore.

They dispute about three angry motions that lord Pigot proposed, against any of them visiting the nabob or his sons, and that he should be sent to Arcot to reside, and about another motion or two of that sort.

And last of all, the main point they differ upon is this, whether col. Stuart should go to Tanjore without Mr. Russel, or Mr. Russel should go with him?—Now it is not at all material to go into the particular resolutions of these matters that I have stated to you, because it is so clear before the whole ends, that it is plain; lord Pigot insists that he is not bound to put any question but what he thinks fit, and he insists that no act of the majority without his name to it is good, and therefore that he has the negative in his power.

But the great point of all is, what passed on the 19th and 20th of August. There are two or three several meetings where lord Pigot insists that no regard should be paid to the orders for col. Stuart's going to Tanjore, that no motion of that sort should be agitated, and that he will put no question proposed by the majority, with regard to col.

Stuart, and that positively he never would consent to col. Stuart's going, unless Mr. Russel goes at the very same time, and that he will sign no motion that is carried by them, he will not put a question, he will not take their votes. Upon which, they propose, as a way of obviating this obstinacy of the governor, that the member who put that motion which he refused (Mr. Floyer), should collect the whole and take the votes; and it appears there is a majority for colonel Stuart's going.

Then, say they, how shall we get this signed as an act of council, for the governor must put his name to it; he will not do it.

Then they propose that the secretary shall be ordered to put his name to it, saying that it was an order of council, or an order of the governor and council, and this they propose to do, being driven to it by the obstinacy of the governor, who would not put the question; and they draw up a paper and authorise the secretary to sign the order that they should make, and that is in effect this:—We the majority direct you, (speaking to the secretary) to sign by the order of council and send to col. Stuart such and such directions as they were to give.

All the majority then sitting at the board agreed in this vote, and that it should be reduced into writing for all of them to sign; the defendants Stratton and Brooke signed first, being to be followed by the other five; but when they two had signed it, the president took it out of one of their hands into his possession, and declared he would now stop it where it was; and pulled a paper out of his pocket and read it: "I charge Geo. Stratton, and Henry Brooke, esquires, with being guilty of an act subversive of the authority of government," and so on.

The crime was, the signing that paper which the majority had resolved. And charging them with this crime, in doing that which the majority had done in every thing except the signing, for they had resolved it,—then he orders them to withdraw, and then he put the question for superseding them, and gives the secretary an order not to take their votes.

So by this means the majority is turned, for the council is equally divided, and lord Pigot's casting vote carries the question. Now there is that act, and to be sure it was a most illegal, arbitrary, and violent act, and it certainly was an assuming of the whole government by my lord Pigot; because, in order to gain a vote of the majority, two members of the council are ordered out and superseded; if three had been wanted, it would have been the same; they are all equally involved in the same crime, so much as it was a crime to vote as they did; in respect to giving authority to the secretary, they had all agreed to it; and therefore it clearly was for the purpose of getting a majority of the council, and then by getting a majority of the council, any act might be carried

ried; for the governor might stop any council, by going away; and from his not being present and calling a council, no business could be done, that is most certain; but if business was to be done, he must have a council to his mind, and by this conduct most unquestionably he got a majority of the council by force; for in the same way that he struck out Stratton and Brooke, the others too might be struck out.

But supposing this fact illegal in the way I have stated, it is subverting the constitution by the minority of the council; till a remedy could be brought, for the same reason that they dismissed two to day, they might dismiss two more to morrow, if they did not come into his measures. It seems as much laying aside their power as Cromwell did that of the House of Commons when he turned them out of doors.

But the main question then remains; supposing this to be true, will it afford a justification to the defendants? Although at the last voting they were a majority of the council then present, they had no legal authority whatsoever without the governor. They are no council without the governor, for the council must be called by the governor, and they must be duly summoned. The moment of the suspension, there is no summoning in the case; and you see I do not state here lord Pigot's suspending the others of the council afterwards, nor arresting sir Robert Fletcher, because there is a doubt of an hour or two, whether it was not without knowing how the others acted,—that each acted without knowing the orders of the others. Now upon what ground is this justification? they had no legal authority, that is certain. Why they say, it was upon necessity; and to be sure wherever necessity forces a man to do an illegal act, *forces* him to do it, it justifies him, because no man can be guilty of a crime without the will and intention of his mind. It must be voluntary; therefore a madman cannot commit a crime. A man who is absolutely by natural necessity forced, his will does not go along with the act; and therefore in the case of natural necessity, (and, by the by, whenever a question turns upon natural necessity it is a question to be determined by a jury, and by a jury only, it is a question upon fact and the degree of fact), if a man is forced to commit acts of high treason, if it appears really force, and such as human nature could not be expected to resist, and the jury are of that opinion, the man is not then guilty of high treason. In a case of homicide, if a man was attacked, and in danger, and so on in a variety of instances, natural necessity certainly justifies; but this is not a case of natural necessity; lord Pigot was not going to kill any of those men, nor attack them either in his private capacity, or as governor or magistrate with his council; and therefore it must be what is called a civil or a state necessity.

Now as to natural necessity, the instances I alluded to are all adjudged cases and authorities.

As to civil necessity, none can happen in corporations, societies, and bodies of men deriving their authority under the crown, and therefore subordinate; no case ever did exist in England, no case ever can exist, because there is a regular government to which they can apply, they have a superior at hand, and therefore I cannot be warranted to put you any case of civil necessity that justifies illegal acts; because the case not existing, nor being supposed to exist, there is no authority in the law books, nor any adjudged case upon it. Imagination may suggest, you may suggest so extraordinary a case as would justify a man by force overturning a magistrate and beginning a new government, all by force, I mean in India, where there is no superior nigh them to apply to; in England it cannot happen; but in India you may suppose a possible case, but in that case, it must be imminent, extreme, necessity; there must be no other remedy to apply to for redress; it must be very imminent, it must be very extreme, and in the whole they do, they must appear clearly to do it with a view of preserving the society and themselves,—with a view of preserving the whole.

But in this case here, where is that imminent extreme necessity? but that I leave to you as judges of it. For as in natural necessity, so in the other, the jury are to judge, if a case exists, or if you think this a case existing of that nature. What immense mischief would have arisen, to have waited for the interposition of the council at Bengal, or even to have waited for the directions of the East India Company here? or what was to be done, suppose the rajah of Tanjore had got possession of this crop, and more than he ought to have had? would there have been a dissolution of the factory at Madras?

You will take all the circumstances with you and consider them. For I suppose lord Pigot's government by his council an illegal government after this: suppose it so; but then the other is an illegal government too; the other is quite illegal; there is no council at all. Then you must see, the Company's settlements are preserved by it. For if there is a struggle of a faction, it will be upon an illegal act. If the governor does twenty illegal acts, that will not be a justification of it; it must tend to the dissolution of society, and the intervention must tend to the preservation of it.

There are many collateral circumstances they insist upon, but independent of a word of them, it is necessary for you to be satisfied, this is such a necessity to preserve the settlement of Madras to the Company and to the English crown, as is analogous to the natural necessity I have been speaking of.

There are other circumstances I will allude to for your consideration, that is,—whether

this has really been a struggle about, in the first place, preventing the rajah from having possession of this crop? Now as to that, if it turned upon that, it is not very clear, upon the evidence, that the Company had decided with regard to that question; for the president and council wrote to the Company, and they tell them they have put the rajah into possession of all that his father had in 1762, that is of all the land.—But a man may be in possession of the lands and another have a right to the emblements; they write a letter to the Company, and say the rajah is in possession, and about the possession of the crop there was a difficulty; and they go upon this ground, in their resolutions, that the nabob had sown the crop, and therefore should reap it.

Then there is another point that suggests itself, that is proper for your consideration, and that is, that in taking up the claim of Benfield there must be a fellow-feeling for him, or some interest must be concerned, for the majority had voted before for giving the rajah the crop upon the ground; and they gave orders to the military to march in, that it would not admit of delay, because the crop was upon the ground; some words or expressions of that sort were used, it would not admit of delay, because the crop was on the ground.

That is offered as another subject for consideration, as having some private views, but there is no evidence to this point. Then to be sure they begin their government with an illegal act, which is superseding and not summoning members to the council, and I think those are the general heads and topics.

But the only question for you to consider is this;—Whether there was that necessity for the preservation of the society and the inhabitants of the place as authorises private men (for when they are out of the council till a council is called they are private men, the counsellors are only more considerable men, and more to be trusted by far) to take possession of the government; and to take possession of the government, to be sure it was necessary to do it immediately; if they were warranted to do the thing, they had not security in it without taking the person of lord Pigot; for he had all the military with him within the fort and town; he had long ago been governor there, and had been there at the siege of Madras, and was known to the soldiery.

If you can find that there was that absolute imminent necessity for the preservation of the whole, you will acquit the defendants; if you think there was not that absolute necessity, notwithstanding the provocation they had from the very illegal act of lord Pigot, and the effect of what the council resolved before that transaction of lord Pigot—if you think there was not that absolute necessity that I mentioned (for I know, as I said before, no definition, and there has been none made in the argument of this case, of that necessity), to justify the defendants in this case, you will

find them guilty; therefore upon these points, gentlemen, you will consider of and find your verdict.

The Jury, after retiring for a short time, at two o'clock in the morning brought in their verdict, Guilty.

In the preceding Report of this Trial, there appear to be some inaccuracies of the Short-hand writer, which I have not ventured to correct.

[I have not met with any Report taken in Short-hand of the proceedings in this Case subsequent to the Trial. Of these proceedings, the best account I have discovered is exhibited in a Pamphlet published* at the time, and intitled, "An Abstract of the Trial of George Stratton, Henry Brooke, Charles Floyer, and George Mackay, esqrs. for deposing the Right Hon. Lord Pigot, late Governor of Fort St. George, in the East-Indies, London, 1780." From this Pamphlet, the Report given below is principally taken.]

On Thursday, 3d of February, 1780, being the day appointed for the defendants to receive the judgment of the Court,

Lord Mansfield reported the case. He stated, that the evidence given at the trial, consisted of minutes of consultations, of letters, and other exhibits, which, he said, took up several hours in reading; from two volumes, printed by authority: that from these books was read, as well the evidence which applied to the defence, as that adduced in support of the prosecution. It is, said his lordship, impossible to state that evidence minutely; if I should attempt it, I do not know how long a time it would take: but to obviate that difficulty, and render it unnecessary, I have used this expedient: Mr. Justice Willes,† having some connection with the parties, declines

* With the following

"ADVERTISEMENT.

"The following state of the proceedings against Mr. Stratton and others, for their conduct on the late Revolution in the Settlement of Madras, is a copy of the Notes of a gentleman of Lincoln's-inn; taken for his own private use, and transcribed at the desire of some particular friends. As they were not intended to meet the public eye, they will not be expected to furnish a technical detail of the whole proceedings. The Editor flatters himself they will be found to be faithful; and as the prosecutor and the defendants, (from obvious reasons) decline publishing the Notes of their Short-hand writers, he presumes a design to inform the public on a subject which has justly awakened their curiosity and attention, will be favourably received."

† He did not attend.

giving any assistance: and I have given the other judges the printed books with my notes, referring to the dates and folios of such parts as were read in evidence. They have, too, my notes of the parol evidence, which tended only to fix a charge, that the imprisonment of lord Pigot, or the removing him from one place of confinement to another, was with intent to assassinate him: the evidence does not prove it; nor was it charged by the information. It was intended likewise to prove, that by a conversation on the 27th of August, between lord Pigot and eighteen artillerymen, it appeared, that his lordship was a daring intrepid man, and that if he could have got over the troops to his party, he would have used them.

Mr. Attorney General, in his opening, laid great stress on that circumstance; that it was actually intended, under the pretence of removing his lordship to a more proper place of confinement, to assassinate him: it was stated with great energy, laboured by the evidence; and there were *answers* given to it by the defendants: and in his reply, Mr. Attorney General laboured it excessively, with more than his usual eloquence. I thought the defendants had particular reasons for not objecting to it, and therefore I did not prevent their going into it. It certainly made a great impression on the audience, but it was not in the cause; nor was it properly a circumstance of aggravation of that crime, which was alleged by the information. It is a rule of law, that wherever there arises a fact, constituting another and greater crime, it must be laid in the indictment or information, as where the same crime is, either less or more enormous, according to the circumstances, as imprisonment: but where the intent constitutes a crime of a different complexion, that intent must be laid in the indictment: as in the case of an indictment *for an assault* on a woman, you cannot give in evidence that it was with intent to commit a rape. An assault, with intent to commit a rape, or to maim, and a variety of other cases, cannot be given in evidence on an indictment for an assault only; the intent cannot be tried, unless it is charged. I gave a decided opinion as to this point: I thought it justice to the defendants so to do: though the jury could not exercise any judgment on that question. I told the jury that I was satisfied (and I am now fully satisfied), that the defendants never intended to put lord Pigot to death, nor to use him ill, or worse than the necessity of his imprisonment required. The evidence, indeed, proves, that rather than let him escape, they would have proceeded to extremities.

There is a letter of the defendants, on which great stress is laid: wherein they say, *that in any attempt to rescue his lordship, as the last resource, his life must answer it.* The defendants say, they did this to intimidate his lordship and his friends; and the thing imports so; for no man who intends to assassi-

nate another, tells him of his intention. They offered to discharge his lordship, on being secured against any violence on his part, and on his engaging for the public tranquillity. There was no cruelty exercised: their conduct was calculated only to prevent his rescue, whereby their government would have been endangered. Great stress was laid on the violent dispute between the governor and the majority of the council, whether one Benfield who had lent, or said he had lent, the nabob large sums of money, on the security of the crop of Tanjore, should have the benefit of that security against the rajah; and it was insinuated, that the defendants were concerned in that loan (if any existed), Benfield being in a situation incapable of lending it, and that they were acting for their own money; or if this were not the case, then, that money was corruptly given among them for their interest. They gave evidence that Paul Benfield was in England, and had been seen in London, three, four, or five days before the trial; and there was great use made in the reply of the circumstance of the defendants not calling Benfield to give evidence whether the money was actually lent, or who was concerned with him. If it had been proved that it was the defendants' own money, it would have been a material circumstance of aggravation: if this was the motive of their action, if they were influenced by corruption, it is doubtful whether it ought not to have been charged—but there was no evidence either way. It is certain, there were great jealousies and suspicions of each other between lord Pigot and the council. There was no reason why the prosecutor did not call Benfield; he might have examined him to all these circumstances.

There was a piece of evidence offered by the defendants, which consisted of letters to, and answers from, the supreme council at Bengal; the reading these was objected to on the part of the prosecution: but as the governor and council at Bengal, have a superintendency over all the settlements in India, as to the making war and peace, and as this was a political question, involving in it the welfare of the Company at a great distance from Europe, on concerns of eastern princes, whose interests are much better known and understood there than here, as the supreme council were written to by lord Pigot, as well as the defendants, and as their answer is in an authoritative stile, I thought it proper evidence in a question of political necessity, to go to the jury. In the course of the cause, I took the truth to be, and accordingly stated it so in my directions to the jury, that the information contained five counts; that the two first counts charged the defendants with having assumed the government, as well as the imprisoning lord Pigot; and that the three last, charged the imprisonment of lord Pigot only, but did not charge the assumption of the government: but I told the jury,

that I did not see any distinction between them; because the defence of all the five, was the civil necessity which the defendants say ought to justify what they did; and I told them, the defendants must either be acquitted, or convicted of *all*; that the facts were all admitted, and that it was their duty to judge of the justification. There was not any observation made by the counsel upon this direction; but we were all overseen; for the first count states a fact necessary to be proved, and which ought to have been left to the jury, and which, I think, was not proved. It charges that the defendants assumed the government, and imprisoned lord Pigot, to prevent his executing the orders of the Company to restore the rajah: this is a very material fact, and ought to have been stated minutely to the jury. The question was, whether the nabob, who was in possession by consent of the Company, and had sown the country, should have the emblements? they write a letter to the directors here, that they have put the rajah into possession of all that his father died seized of in the year 1762.—The jury must have acquitted the defendants upon that count. I told them, that the only question was, whether the defendants could justify what they did? and that this depended on three considerations.—*First*, The constitution and government of the settlement of Madras.—*Second*, Whether lord Pigot had violated and overthrown that constitution? And if he had,—*Third*, Whether that would justify the conduct of the defendants? I told them, that by the constitution, the governor is an integral part of the government; that the council could not be held but in his presence, unless in cases where the deputy was provided to supply his absence; that though it could not be held without him, yet he had no negative vote, nor power to refuse putting any question proposed in council. Upon the second point, I stated, that the majority of the council required lord Pigot to put a question for signing the instructions to colonel Stuart to proceed to Tanjore; that he declared he never would, but afterwards only insisted that Mr. Russel should go with colonel Stuart; that they adjourned, and at their next meeting, the majority had prepared a request and order to the secretary to sign the instructions, by order of the majority of the council—(lord Pigot still insisting that he had a negative power):—The order was agreed to by the majority, and they were signing it: when two had signed it, lord Pigot snatched it out of their hands, and produced a written card, charging those two (Stratton and Brooke) with this crime, which was the act of the whole majority. He does not allow them to vote, though there is no cause of suspension, it being the act of the majority; and he then carries the question by his own casting vote. He acted herein in violation of the constitution, and was not justifiable.

There is a circumstance which brings it nearer of any to the cases of natural necessity, which is, that soon after the council broke up, lord Pigot and his council, ordered sir Robert Fletcher, general of all the Company's forces, under arrest, to be tried by a court-martial for mutiny, for his behaviour in council, and suspended the four other members. I enquired (said his lordship) at the trial, and I wish now to know with precision, whether the arrest of sir Robert Fletcher, and the suspension of the rest of the majority, was *before* they had assumed the government, and ordered colonel Stuart to arrest lord Pigot. It was left doubtful at the trial, whether it was before or after. It appears by the minutes of the consultation, that the four members had notice of their own suspension and of the arrest of sir Robert Fletcher, on the evening of the 23d of August, and their order to arrest lord Pigot is dated the same day, at three o'clock P. M. [Note, It was sworn by the defendants in their affidavits, which were afterwards read, that their orders were subsequent, in point of time, to, and in consequence of their suspension, and the arrest of sir Robert Fletcher.] If, continued his lordship, these acts of lord Pigot were after their orders, they had no excuse for their conduct, but *the apprehension* of danger; if they preceded, they had great additional danger to apprehend and account for their motives. I stated the opinion of the supreme council, not as conclusive.

I told the jury, that the third consideration was, whether the defendants were justified, by the acts of the governor, to assume the government by a military force? The law knows, and the books define, what a natural necessity is; and no man is criminal for acts done by him, under the impulse of such necessity; and the law has provided for cases where magistrates in this country go beyond their power: but it is entirely new to subvert by force a subordinate government: it never did, nor could exist in England: no such necessity can exist here, because there is a legal remedy provided. I would not say, but that in the East India settlements, which are of a peculiar nature, at a great distance from this country, forming a sort of sovereignty, surrounded by foreign princes, such a case might exist, and such cases did present themselves to one's imagination; but being cases merely existing in imagination, I did not dare to state them to the jury; but I told them, that unless a variety of things concurred, such an assumption could not be justified; that it was their duty to try whether it was justified: that to amount to a justification, there must appear imminent danger to the government and individuals; the mischief must be extreme, and such as would not admit a possibility of waiting for a legal remedy. That the safety of the government must well warrant the experiment. If it is such an evil as it would be better to tolerate than to bring on a civil war, the attempt to remove it would

resolutions to controul the proceedings of the president.

Mr. Lind. They have no sort of controul by the words of the Act as to their internal government.

Court. Not with the government; but when they are all together by the ears, nobody can interpose if they do not.

Mr. Lind. My lord, the governor and council have no command of the forces, so that way they could not have interfered.

At a consultation 25th of June 1776, present as before, the president and council. Enquiry into the nabob's complaint of the rajah's people taking part of his territories, &c. in which those complaints are refuted.

REPLY.

Att. Gen. Please your lordship, and gentlemen of the jury; I am under a necessity of troubling you again; but I will endeavour, upon your and my own account, to comprise what I have to say to you, in as small a scope as I can; and not run again into the variety of matters which have been agitated in the close of the day, and which do not seem to me to be strictly and pointedly applicable to the information which you are to try. In the outset of the business, I stated to you under what countenance and authority this information was brought to a trial; I stated the direction I had for the prosecution; I stated the resolutions that had recently passed in the court of proprietors, when the matter was first canvassed, upon the first information coming to England. The first authentic information, and that frequently before the proprietors for their information, was a long letter from Mr. Stratton and his associates, in vindication of their proceedings, to the Directors of the East India Company at home; which letter was immediately put into print. I was not inaccurate in stating the resolution of the general court of proprietors,—however they differed in some circumstances, they were all uniform to one point; the second resolution, as strongly as the first, inculcated and commanded the restoring lord Pigot to the government. The first resolution of the court of proprietors, was to take immediate and direct steps to restore lord Pigot; there was some difference after in the mode of it, by a change of the direction, and some delay; but there was no variation from the ideas, that lord Pigot was wrongfully dismissed from the government. Mr. Rumbold, who went out with a commission from the East India Company, went out with express orders to restore lord Pigot to the government; to put the government again in the possession of lord Pigot: so far they disapproved of what had been done in the acts which they conceived to be totally illegal, by Stratton and those joined with him. Separately from that order, there was another, that the parties in this business were supposed to be much heated against one another, and were directed

to return to England, as that might be a proper measure for the future peace of the settlement. Though that passed in May, the second resolution was as strong as the first, respecting the propriety of restoring lord Pigot. As to the resolutions that passed in the House of Commons, there certainly was very full demonstration and complete evidence laid before that House, antecedent to directing this prosecution: it was thought, within the power of that branch of the legislature, proper to be done, and consistent with their duty, in order to bring the offenders to public justice. It was said, in a matter of this sort they might have done one thing different; they might have made it their own prosecution,—and the magnitude of the cause would not have ill deserved it;—and have been themselves the prosecutors, by impeachment, at the bar of the other part of the legislature. Though that was not, in my judgment, inadequate to such a case as this; I am much better pleased with this, whoever advised the mode to be adopted, for the Attorney General to prosecute; for this plain reason, I think this is a great, and will be a memorable case for example; as it will not only be doing justice in this particular instance; if that were all the object of it, and the punishment went no farther than to make some degree of compensation to private persons, for injuries they will feel to the last hour of their life, it would not be a sufficient ground for inflicting of punishment; for that partakes more of private revenge. The only end I know of punishment, is for example to others; for the preservation of the order of society; and making distinctions between the nature of small, and great offenders, for the commission of crimes that endanger the peace and well being of society. I for one think the effect of that example, is better attained in this course; by exhibiting to all who were in India and all who may meditate to go to India, to be in rule there, that in the court of King's bench, and by a jury of Englishmen, the conduct and the behaviour, the affairs of a governor and council in India, may come to be scrutinized; as in an ordinary course of justice, the facility of carrying on such prosecutions; the frequency of them, if the example should call for it, will strike much more in point of example, and be a subject much more useful, than the great and uncommon way of prosecution, attended with all the solemnity of impeachment by the Commons of England at the bar of the Lords. For this reason, it is, I am glad this mode of prosecution was adopted, and I am commanded to do it. I shall say no more to circumstances foreign to the strict merits of the cause. Gentlemen, you will now give me leave, for a moment, to call your attention to what those merits are. I beg leave to consider, in the first place, how lord Pigot went out to India; under what authority he began to act, in December 1776, when he arrived there. He went under an

order which I was astonished to hear was not sufficiently positive; though I agree the orders are not worded with that accuracy my learned friend would have put to an order of his composition; but I have read the whole order, the language is plain to those purposes intended to be effected by it. It was the object of the directors, upon account of the violated honour of the nation from that great breach of faith committed respecting the rajah of Tanjore, that he should be immediately restored to the possession of his dominions, under certain terms and conditions between the rajah of Tanjore and the Company, not in that instance, nor the rest of the resolutions having reference to the nabob, but in the business I shall state hereafter; which terms and conditions,—notwithstanding this strange comment put upon the order from some minutes read to you,—were not left to the gentlemen at Madras to settle; nothing like it: the order goes on, and article by article, states the terms and conditions to be made upon the restoration of the rajah. If your lordship turns to the order, your lordship will find I am correct in stating the terms and conditions alluded to in that paragraph. The orders are the subject of several subsequent paragraphs that follow from about the 6th or 7th; the condition is, admitting a garrison of their troops into Tanjore; and upon that it is stipulated upon the part of the Company,—for the sake of the peace of Tanjore, and in order to prevent any hostile intentions that might spring up at Tanjore to endanger the peace of the Carnatic and endanger the peace of the Company's settlements,—they are to assure him at the same time, it is not intended there shall be any diminution of the king of Tanjore's authority over his subjects; they are, that the king of Tanjore shall consent to be at the expence of that garrison, that if any dispute arises, respecting the contingent or other expences, they shall be adjusted by the king of Tanjore's agents, and president and council; and the accounts shall be made up every 3 months; that the expence of the garrison shall be settled between the king of Tanjore and the Company; and he shall assign to the Company revenues for the maintenance of that garrison. In the stating of all these terms there is no condition that has the nabob for its object, but one, and that is distinctly and plainly expressed: the Company explain themselves to mean not to infringe upon the just rights of the nabob, and they define what those rights are: that when the king of Tanjore is restored to the possession of his dominions, he shall continue to pay the tribute of four lacks of rupees, which by the treaty of 1762 he was bound to pay to the nabob. These are, strictly and plainly, the limitations and terms of the business that was committed to lord Pigot and his council to be done forthwith; and the immediate restoration of the rajah is the subject spoken of in every line of the instruc-

tions.—In pursuance of those instructions, lord Pigot went to Tanjore; and the 25th of March, it was resolved he should go from Fort St. George to Tanjore; my learned friend argues there were no obstructions made to his proceedings till that period; and to that period I acquit the defendants of any improper motives, any connection, or any thing that could act improperly upon their minds. There certainly is no evidence down to the 25th of March, that tends to create any suspicion upon their conduct; but you will observe, before that 25th of March, in the letter that was read, the great object of the nabob was to postpone, delay, protract, and put off the restoring possession of the country. As to the fort of Tanjore, he had no objection to admit the Company's troops to garrison the fort of Tanjore; but he did not chuse to restore the possession of the country. He writes letter after letter, with all the civility he could, and begging all that he could, setting forth his own merits with respect to the Company, with all the personal address he can use to lord Pigot; and desires him, by all means, to postpone, what the Company's orders left lord Pigot no authority to postpone,—the restoration of the country, he wanted to continue another year in possession of. That was meant to be the effect of his letters: a great deal turns upon the sense you will give to the words, 'restoring the rajah of Tanjore.' Was it complete upon the 14th of May? There was in Tanjore a garrison of the Company's forces; the rajah was at liberty; but to be restored to the possession of his country, meant to be restored to the revenues of his country; which meant that he should be restored to the corn of that year, as the corn there is the revenue of the country. As I am now upon it, let me take notice of a passage in this letter that afforded a comment in the ingenious defence, which I did not think would have been adopted. The Company supposed the nabob was to be in possession of the country; and they say, we must suppose that the plunder of the place, and the receipt of the revenue, for more than two years, will have rendered the nabob a very considerable gainer, after defraying all the charges of the expedition.—The Company reasoned very rightly, he had been in possession that time; he was in possession of Tanjore in September 1773 when the crop was in the ground; he had the crop of 1774; and he had the crop of 1775;—crop and revenue you see are the same thing in that country; he had received the crop of 1774, which was not sown by him; he had received the crop of 1775; and the crop of 1776 was in the ground, when the Company's orders arrived; that crop then in the ground was the great object of all the confusion and contention upon the part of the nabob, who claimed a right to reap the current year's crop,—that crop which was to be reaped in 1776; though the council understood it otherwise.

Good God ! it is plain, to a demonstration, how they intended it at that date, when no influence operated upon their minds. Upon the 25th of March, they direct lord Pigot to go to Tanjore; the state of the crop making it necessary he should proceed without delay. Upon the 24th of April, upon an application made by the rajah to lord Pigot, who was then at Tanjore, advice of which he sent to Mr. Stratton and the council, they send him a letter, in answer, in which they agree to buy of the rajah, upon account of the Company, all the crop of the year beyond the necessary quantity for the consumption of Tanjore : and in those two instances, they have decided what they understood to be putting the rajah in possession of his country, that it includes the crop of that year, which the nabob had no colour or pretence or right to continue, and which, right or wrong, the orders of the Company left them no latitude to give him ; unless it was under that strange idea that the words 'for more,' might extend to keep the nabob in possession to the end of time. If lord Pigot had not complied with those orders of the Court of Directors, he would have deserved the epithets which are much more properly applied to other persons. That was not all : upon the 29th of May, upon the examination of Mr. Benfield's claims, founded upon the assignments made by the nabob, that affected the current crop of the year, the council then decide, by a majority,—not a casting vote of lord Pigot, but 6 to 5,—they decide the nabob's assignments inadmissible. Most undoubtedly they were so, with respect to that crop which was upon the ground ; for, from the time of the arrival of the Company's orders, the possession of the nabob was to cease ; and the possession of the rajah to commence. The nabob by writing, by negotiations, and by gentle methods, thought to prevail upon lord Pigot to delay the time ; that carried it up till towards the time of harvest, about the beginning of March or April. The whole matter, therefore, that produced resistance, and the cause of all the mischief that ensued, arose from the single question which had been agitated and determined upon the 29th of May, respecting the possession of the country of Tanjore, to be restored according to the tenor of the Company's orders, which included the possession of the crop of the year 1776, which belonged to the rajah and not the nabob.

Mr. Dunning. It belonged to the crop of what was sown in 1775.

Att. Gen. I beg your pardon : the nabob had reaped that.

Mr. Dunning. In 1775, Benfield was in possession of them ; and was deprived of them in 1776.

Att. Gen. I stated, that the assignment of Mr. Benfield's possession of the corn, mentions they are in the hands of his officers ; and that they say, and he says, and only says, they were taken from his officers by seapoys,

acting under the Company's orders. As to that,—the orders the seapoys were furnished with, if any were given,—he is called upon to point out any part which was the property taken from him by any seapoys ; and they held up redress to him. But the objects of complaint, brought the 29th of May, to the Company, are the assignments made by the nabob, and taken prior to March 1775,—the mortgages upon the growing crop of the ground,—the other article of claim, was advances made to inhabitants, in August, in September, and in October 1775, to enable them to put the crop in the ground, through the medium of the nabob's son ; for which he said he had their bonds, which were not in his own, but in somebody's hands to be registered ; they are never produced ; the other two articles of assignments, are for old debts upon the Tanjore revenues. Observe the assignments bear no date : and they are never produced. He says that one is an order upon Puttestah ; and one on Papanashem ; they have no dates ; the money advanced to the nabob might have been taken, from Benfield's story, as advanced from the January or February in the course of that year ; but that is quite another question : but the assignment given to him, by way of mortgage, could not be the crop of corn, but the mortgage of the last year's grain ; but it is the corn then in the ground, that is claimed ; the right asserted, is to keep that crop, in consequence of the right of the nabob ; which was afterwards affirmed by the vote of the council, no doubt when they stated what the council resolved : it was not contended so impudently afterwards, for they say in one of their letters, they only recommended, they don't mean to enforce. Good God ! If they only meant to recommend, and not to enforce, what meant that ungrounded resolution of theirs,—the first of the three motions, made upon the claims,—made upon Benfield's claims, that the nabob had a right to the crop of the year ? I cannot forget that question was put, and they have affirmed it, without examination or evidence. And if they affirmed it, it must be by the argument of Brooke ; but upon no argument that I can conceive, should they have affirmed it. To follow the progress of what I am going to state, the sole cause which affected the whole, was the assertion they then made, that the nabob had a right to the crop in the ground, sown in 1775 (and then lord Pigot arrived,) to be reaped in 1776. In the nabob's letter, when he talks of having made assignments of that crop, he makes use of it as an argument and reason, why he should be allowed to reap it. He is called upon, before Benfield appears upon the stage, to explain what these assignments were, to whom made, and to give an account of the receipts and disbursements upon account of Tanjore, to shew how the account stood ; he never gives that account, but talks obscurely and mysteriously

about the assignments, though the question was put to him by the council; he never answers, in subsequent letters, when they call upon him to explain them. You are to judge, gentlemen, when the business of the nabob was brought forward in the shape of Benfield's claims, why Benfield's claims should have better fortune with the council than the application to the same effect and purpose urged by the nabob, from December to March, which seems to have had no effect. They did not avail in the mind of the council; they did not prevent the orders to lord Pigot, to go to Tanjore, the state of the crop requiring he should then go; by the orders of the 29th of May, the resolution of the council then was, the assignments of the nabob to Benfield are inadmissible,—how came Benfield to be again consulted? I stated in the opening all I could hear of Benfield; with this confidence, that if I had been inaccurate in stating it, I should have an opportunity of being set right, by a possible conversation with Benfield. Can any body, who heard me, conceive that it should not occur to the defendants to judge, and say, whether they did or not think proper to examine Benfield? and the reason why he is not produced is clear. In all these proceedings, during the whole course of them, Benfield being the origin of all this evil; the disputes springing out of Benfield's business; he now in England; is it possible to imagine, if Benfield could have cleared up the matter favourably for the defendants, his testimony would not have been used upon this occasion? Mr. Dunning was perfectly right, to say he was not counsel for Benfield. I stated it fairly; and urged the necessity of calling Benfield; you will judge how far I put it justly; I have not put it unfairly. Benfield is existing here in England, and capable of being produced to be called as a witness if they pleased; and he is not called to explain one of these transactions, or to wipe away the inference, that arises from so enormous a claim as 250,000*l.* starting up in the person of Benfield, and that claim succeeding to procure not only a recommendation to the rajah in his favour, but other resolutions of the board in his favour, and a decision in favour of the nabob;—not the very moment, but almost directly as soon as a majority was got together, to procure a decision upon the nabob's claims, which, notwithstanding direct and repeated applications from the nabob, before they had constantly refused! When I see those facts staring me so broadly in the face, is it possible for me to entertain so very milky a candour upon this business, as not to discover the fact? or is it possible for your minds to be so far divested of all reason, as not to conclude it was the easiest of all possible matters to put assignments in the hands of Benfield? If they prevailed, they dragged after them the possession of the revenues for another year; they had that effect; whether

they pushed the matter afterwards, was not of such consequence; that dropped in the course of the argument; I don't know whether the fact is so or not; I believe the matter rested, and has not taken effect in the Tanjore country; for what happened afterwards was the effect of the events not foreseen at that time. However Mr. Benfield's claim prevailed; they were adopted, and had the effect with them to substantiate the nabob's claims; they are decided directly, by a resolution the nabob had a right and title to the revenues of that year. To the resolutions upon the head of Benfield's claims, succeeds the contest about a person to go to Tanjore.

Give me leave to observe upon what you have heard in this case, upon that head, it is very extraordinary; till now it did not seem to me to be in the compass of men of the most mischievous imagination, to devise a method to put a government in confusion, and overturn it upon so simple a matter as a question of who should be appointed to go to Tanjore to attend the rajah at this particular moment. I before stated, that it appeared, they were to carry recommendations to the rajah, though they had voted it was the nabob's right; so long as they could carry it civilly, they meant to do it; therefore, say they, we meant to send a recommendation to the rajah to shew attention to Mr. Benfield: if they stayed so long as to let the rajah get into possession of the crop, liable only to representations in behalf of just claims that might be made upon it, they knew there would be an answer to them; they knew there would be no possession taken, that the grain might be disposed of, and the matter would run into length, and might terminate afterwards in a reference to the directors at home. Their object was the keeping possession of the rajah's country; to conduct such a scheme, therefore, it was essentially necessary, that they should endeavour to send a man of confidence, to talk proper language to the rajah; as that was a matter upon which the whole hinged, whether the orders of the Company should be carried into complete execution, or not; whether the matter should be with the rajah or the nabob. As to the crop of 1776, the whole of it, they thought, was perfectly dependent upon that: their object therefore was to send col. Stuart, and to prevent Mr. Russel from going. As to col. Stuart's going, my learned friend suggested very good reasons and made very ingenious comments upon col. Stuart's letter, respecting his reasons, why he should prefer the command at Tanjore to Vellore, and referred to the imagined dangers, hinted at in one of the minutes, to the supposed designs of the French in concurrence with Hyder Aly, the rajah of Mysore. If they had had better to have given for adopting col. Stuart's object of going to Tanjore, they would have given them; unfortunately for those reasons and

my learned friend's observations, the reasons they adopted were false; there was no alarm from the French, the true reasons were of another kind, there was not any intimation of Tanjore being a post of honour, and the most important situation in that respect; yet that was the argument urged upon the other side. If this importance were true, so far as it regarded the defendants in a political sense, it was not in a military sense so important as Vellore; but the other sort of importance was quite of another kind; there is no doubt, under their command at Vellore, there were 500 Europeans, at Tanjore only 100. Col. Stuart states, as second in command, he was entitled to the post of Tanjore if that was not supplied by sir R. Fletcher himself, intimating that which never took effect,—what he thought,—that they had a right to send more troops there. What necessity was there for sending him there, whilst the force at Tanjore was so unequal to the command of an officer of col. Stuart's rank? sir R. Fletcher's reason is not so well applied upon this case, as my learned friend's, which was extremely ingenious; but sir R. Fletcher's is not among the nature of those to which we ascribe the term ingenuity, it is only finding a false reason when an ingenious one could not occur to him: sir R. Fletcher reasons in this manner; he wishes to have col. Stuart's sentiments regarding the state of the fort and country of Tanjore, with respect to their defence; particularly at a time when there is intelligence of armaments coming from France. Lord Pigot answers it, and says he should be glad to have col. Stuart's opinion upon the defence of Tanjore; he wished to have an officer of his experience to report what the state of the defences was; but that imagination of an alarm from the French,—which was only an imagination in the first place,—was deserted, and all the rest of the reasoning goes upon the recommendations of the commander in chief. One of the gentlemen takes notice, that it is the Company's orders attention should be paid to the recommendations of the commander in chief; however, it was determined Mr. Russel was not to go. And it was stated to you with great candour,—my learned friend feels observations of that kind, which are only to be conducted with the utmost degree of candour,—that there was no ground for lord Pigot's pressing for him to go only for a few days; those reasons have been explained to you; and not for the reasons that occurred to me and my ingenuity only, but the effect it would have upon the rajah from being uninformed and prejudiced, was suggested by my learned friend, and some other reasons of a private nature, why it was expedient for Mr. Russel to go to Tanjore. Now, gentlemen, after all that has been said upon this subject, perhaps I do not hazard a very improper conjecture, or a wild one, if I conclude, positively and certainly, that you may, many of

you, be of opinion that all that has happened at that place, at the time it did happen, could not have happened without the influence of those gentlemen, and inducements operating upon the one side or the other,—I ask no more. I think it probable you may be of opinion, that the consideration of money may have weighed upon this business, on one side or the other. As to ideas of imputation that the members of the council might be supposed to have entertained, and the inference they might draw from Mr. Russel's going to Tanjore, you will judge how they are founded, from the conduct of both sides. I offered Mr. Monckton, the intimate friend of lord Pigot, his son in law, acquainted with every transaction, even the most secret that could be discovered by his papers, who performed the part of executor,—I offered him, upon the most public examinations on that head, to shew lord Pigot was in that part of his life, as well as every other, superior to all things of that kind, where his duty was concerned.

Upon the other side, they did not produce Mr. Benfield. Now I repeat it again, I cannot conceive it possible for any man to imagine, that in this case, connected as Benfield is with it, Mr. Benfield should not be called upon to give evidence, if they had thought it expedient for Mr. Benfield to have stood the examination.

Mr. Dunning. My learned friend seems surprised, that I did not call Mr. Benfield. If Mr. Benfield had been here, I should have called him. Mr. Benfield is not here: it is impossible for human ingenuity to find out from the information, any thing concerning Benfield. I myself confess my idea in the course of the business, in a charge like this, where neither the name of Benfield appears, nor his claims, directly or indirectly, nor charges of corruption, of any sort or kind whatsoever, against him, it would no more occur to me to call upon Mr. Benfield to be produced as a witness, than to send for the nabob.

Court. To be sure there is nothing in the information that imports it.

Att. Gen. Is there nothing in the information that leads to the name of Benfield?

Court. Not to a charge of corruption.

Att. Gen. Is there nothing that leads to it?

Mr. Dunning. There is no such charge in the information.

Att. Gen. To restore Tanjore, is to restore the revenues of it; to keep possession of Tanjore, is to keep possession of the revenues of Tanjore; they are convertible terms. It is impressed upon my own mind, whoever examines these facts (you see we have upon all sides carefully read these proofs) must have been aware how material it was to the future conduct of this business, to shew the legality or excuse upon the one side or the other; and to shew the conduct of Mr. Benfield, from which all the subsequent matters originate. If they were not, I am the idlest of all idle

reasoners, and deserve your reprehension. If you cannot find an analogy, between the claims of Benfield and the subsequent conduct of these defendants, I have been labouring idly indeed, and to little purpose; and must beg your pardon. But if you perceive, as you must, throughout the whole of the business, that which in the information is strictly within the letter of the charge, what they did to obstruct my lord Pigot, when he was proceeding to put into execution the orders of the Company, was done in the instance I mentioned;—Mr. Benfield asserting these claims, and the defendants permitting them to take place in the prosecution of some scheme;—in making it a point to send some particular person to Tanjore;—I have been talking improperly to you, when I say that was the whole of the charge; the charge in the information, is assault and imprisonment of lord Pigot, qualified with these observations, that it was done to obstruct lord Pigot in doing what he was commissioned to execute: from what motives, with what intention, what the principles were operating upon their minds, it is said I am going out of the charge, when I am stating that. Though corruption is not stated, if I prove a criminal act is done, and the mind in doing that was acted upon by corrupt motives, it is a great aggravation. And, though it is not distinctly charged in the information, the motives with which the acts of violence, charged to be committed by the defendants, were done, is a matter for your consideration. It undoubtedly will weigh much, both in judging the nature of the crime, and the defence, and the nature of the punishment to be inflicted upon them. I therefore beg you to bear in mind the object of lord Pigot's commission, how that was obstructed, first by the nabob's interposition ineffectually, afterwards effectually by the interposition of Benfield, of whom so much has been said, whom the defendants, if they thought his claims proper, did not think proper to call. Benfield is in a situation that he might have been produced; that is all I state; and I leave it to you to judge, and to draw an inference from his not being produced.

Matters have been gone into in this cause, of which I don't now go into the detail, of facts, and the narrative which was stated of questions which arose in the month of May 1776, and from that time downwards, in which debates arose upon the extent of the president's authority. Upon that, let me beg of you in the first place to recollect, with regard to the fact, it is said, what were the authorities lord Pigot claimed? It is said, in one instance, he claimed a power of putting a previous question; in another, he objected to any other person's putting a previous question. It certainly was new, as lord Pigot said; and I think it is a little incorrect, to state lord Pigot himself had given an example of it. Lord Pigot said, at the meeting on the 14th of June, and insisted, he had a right to put

his question before Mr. Mackay. Mr. Mackay insisted he had a right to put his question before my lord Pigot, in consequence of an adjournment to take into consideration some motions he had to make, not upon a specific question stated, but only upon an intimation in the minutes by Mr. Mackay, that he had a question to put.

Mr. *Dunning*. What I alluded to, was upon Mr. Mackay's first motion, after the motion was made upon what lord Pigot proposes.

Att. Gen. We are exactly upon the same point; mind if I don't state it. Lord Pigot desired he might put his question first; Mr. Mackay says, no; I have a right to put my question first: then lord Pigot said, the only way to settle this, is to put the question, whether Mr. Mackay's question shall be put, to determine whether Mr. Mackay or lord Pigot had a right to put the question.

Mr. *Dunning*. Is not that in the most express terms a previous question?

Att. Gen. That is in terms a previous question, but it turns upon another circumstance.

Court. Nothing turns upon that; before they had done, he in terms refuses to put the question.

Att. Gen. The observation merely applies to this.

Court. But it does not require exactness.

Att. Gen. I don't mean to state, that he would not put a previous question as totally new: but it is a little material to state that at the time he objected to sir R. Fletcher's previous question, not an instance of that sort had occurred to him. Let me appeal to lord Pigot's understanding upon the subject; I am certain he would not have stated a thing to be new in a settlement where he had done the thing himself before. This was a question upon a priority between two questions; on the mode of stating it, it was upon this point, whether Mr. Mackay's question should be put before the president's, so it was understood at the time by the gentlemen. Lord Pigot however, it is said, objected to putting a previous question. Now I really cannot conceive this was a dangerous or an alarming exercise of power upon the part of lord Pigot; as a majority could not have much difficulty to encounter a previous question, lord Pigot did not gain much by asserting it was a novelty; they would have immediately put the other question. I don't conceive that the assertion upon the part of lord Pigot, that a previous question was new in the settlement, and that he would not put a previous question, was such an innovation and usurpation upon the part of him, lord Pigot, as merited deprivation, imprisonment, and death: less might have done; a less degree of censure was required for such an instance.

Then lord Pigot makes other assertions; he asserts, too, that he has a right to open the business; he states what I believe to be un-

where several of the most respectable people of the settlement have their country houses, and where the nabob has several houses, one of which was then used and occupied by Mr. Monckton, who married one of lord Pigot's daughters. And these deponents, further say, that at the time of sending the said lord Pigot to the Mount, orders in writing were given to major Horne there, to shew his lordship every mark of respect and attention, and which instruction was conceived in the following words: viz. "It is needless to suggest to a man of your feeling, that lord Pigot is to be treated with every mark of attention and respect, suited to the situation which the present exigency of affairs makes necessary." And these deponents say, that the said major Horne, in his letter to the board, on the 25th of August, 1776, informed them, that sir Edward Hughes, Mr. Russel, Mr. Dalrymple, Mr. Lathom, and others, had visited his lordship, and that he expressed a particular satisfaction at being under major Horne's charge, as he was to be under no restraint at all, and that he (major Horne) would pay his lordship every attention and mark of respect in his power, or to that effect. And these deponents believe, that on the said 25th of August, (the day after the removal of lord Pigot), he was visited at the Mount by the said Messrs. Russel, Dalrymple, Lathom, Monckton, sir Edward Hughes, Mr. L'Epine, his secretary, and generally by all of those that used to visit him at the Fort-house, who chose to go to the Mount. And these deponents, each speaking for himself, severally say, that on the evening of the 24th of August, after lord Pigot had been removed to the Mount, Mr. Russel (one of the members who had joined lord Pigot in suspending these deponents, with sir Robert Fletcher, and Messrs. Jourdan and Palmer), having been found at the main guard, then under arms, inviting the troops and others to make resistance, and it being also apprehended that lord Pigot and his friends would use violent measures to regain the possession of the Fort, it was on the 25th of August, in order to prevent any such attempts, and thereby prevent the bloodshed which such attempt would probably have occasioned, resolved, that a letter should be written to major Horne, informing him thereof, and requesting him to prevent any papers being conveyed to lord Pigot, to be signed by him, and closing with the following passage: viz. "As your last resource, in case of any attempt to rescue lord Pigot, his life must answer for it, and this you are to signify to him." And these deponents severally say, that the words above referred to, were proposed and added by colonel Stuart, as likely to deter and prevent mischievous and dangerous attempts, whereby, not only the life of lord Pigot, but the lives of other persons, would probably have been endangered, if not lost; and that upon their being first proposed by the said col. Stuart, they were objected to

by these deponents, or some of them, but were afterwards submitted to, in deference to his opinion, and in the expectation and belief that they would tend to prevent the friends of lord Pigot from attempting his rescue, by which attempts, not only the person of his lordship, but the lives of others would have been endangered; and on the said colonel Stuart's urging that he could not, without some such threat, answer for the consequences, or to that effect. And these deponents further severally say, they have been informed, and believe, that the said major Horne, immediately on the receipt of the said letter, shewed and produced it to the said lord Pigot, and several of his friends, some of whom endeavoured to misrepresent the intention of the said letter, which these deponents being informed of two or three days afterwards, they not only took proper means for refuting such insinuations at Madras, but they also immediately wrote to the governor general, and council of Bengal, to prevent the design of such insinuations from taking effect, and in their letter, explaining their motives for using the expression above referred to. And these deponents, each speaking for himself, severally say, that on the 27th of August 1776, the board, taking into consideration the many evils which might arise, from the violent disposition manifested by lord Pigot's friends, and their indefatigable pursuits in attempting to sow disaffection, as well in the civil as the military servants of the Company, and the fortress of Chingleput, about 36 miles from Fort St. George, appearing a more eligible place for lord Pigot's residence, as in his being removed at such a distance from Fort St. George, as would render any attempts to disturb the public tranquillity more difficult, and there being no objection to the place on account of its situation, in point of health; it was on the proposal and recommendation of the said col. Stuart, the unanimous opinion of the board, for the above reasons, that lord Pigot should as soon as possible be removed to Chingleput, and in order that his lordship might meet every possible mark of respect and attention, and for his better accommodation during his residence there, it was agreed, that a field officer should be appointed to the command of that garrison, and thereupon it was resolved that major William Cooke should be appointed to the command of Chingleput, and a letter was written to him directing him to proceed thither, to take upon him the command of that fort as soon as possible. And these deponents further say, that in consequence of the above resolutions a letter was written, by the council, to col. Stuart, empowering him to take any further measures he might judge necessary for the security of lord Pigot's person, and informing him they were extremely desirous to avoid every chance, either of public disturbances, or risk to lord Pigot's life. And these deponents severally say, that Chingleput is es-

teemed the most healthy place in the Carnatic, and that it was intended lord Pigot should be removed there, and not to Gingee or any other place. And these deponents further say, that lord Pigot having refused to submit to the intended removal from the Mount to Chingleput, these deponents together with the said other members of the council, on the 28th day of the same month of August (which was the fourth day after his lordship's suspension) wrote a letter to his lordship, offering him the choice of any settlement on the coast, where there was a chief and council, provided he would pledge his word of honour to remain quiet, within the bounds of such settlement, until the Company's pleasure, touching his and their conduct respectively, should be known, and that, if he consented to such proposal, they would order the best house in such settlement, with every necessary to be prepared for his reception at the Company's expence, and that every respect and attention should be paid to his person, or if his lordship should prefer embarking for Europe in one of the Company's ships, they would order every accommodation in their power. And these deponents further say, they have been informed, and believe, that lord Pigot received the said letter whilst at table with sir Edward Hughes, Mrs. Monckton, and others, and after reading it publicly to the company present, he delivered it to Mrs. Monckton, but never returned any answer to the said letter. And these deponents further severally say, that during the continuance of the said lord Pigot at the Mount, these deponents were from time to time informed, and believed, that lord Pigot declared repeatedly, that if he could get re-established in the government, he would hang colonel Stuart, colonel Eidingtoun, captain Lysaught, these deponents, and all those who had acted in his suspension. And these deponents further severally say, that the conduct of these deponents, and the other members of the government, towards lord Pigot, subsequent to his suspension and removal, was such, that his lordship was on all occasions (so far from being laid under unnecessary hardships or inconveniencies) treated with every degree of indulgence that was by any means consistent with the end which the board had in view, by the restraint put on him, viz. the prevention of the bad and mischievous consequences which these deponents believe would have attended his return to the fort. And these deponents further severally say, that the said lord Pigot was under no restraint whatever, either as to walking or riding, but that of not coming into Fort St. George, and that to prevent this, it was necessary that major Horne should observe, that he did not break through this necessary restraint; but that in all other respects his lordship was at liberty, and that he visited and was visited, when, by whom and wherever he pleased, and used all the

pleasures and amusements that the country afforded. And these deponents, each severally speaking for himself, say, that at the time they took upon themselves the administration of the affairs of the settlement of Fort St. George, they did then verily believe that, by the nature of their commission, and the tenor of the Company's orders, relative to the powers of the president and council, they, as a majority of council, had a complete power so to do; and that the imprisonment of lord Pigot was a step absolutely necessary to give effect to the power, which they then conceived to be vested in the majority of the council, independent of the president, and as such justifiable and legal. And these deponents, each severally speaking for himself, say, that they did not, in any of the transactions, which are the foundation of this prosecution, act in any instance with a view to assume powers which did not belong to them, or which, at the time, they did not conceive to belong to them, or with any view to promote their own private interest; but that in every step they took in the course of those transactions, they did, to the best of their knowledge, act the part of faithful servants to the Company, and for the interest, and in conformity to the orders thereof; and that conceiving, as they then did, of their own powers and duties, and the tendency of lord Pigot's acts, they should not have discharged their duty to the Company, if they had acted otherwise, or forbore to act as they did.

THE KING, upon the Information of his
ATTORNEY GENERAL,

against

GEORGE STRATTON, HENRY BROOKE,
CHARLES FLOYER, and GEORGE
MACKAY, Esqrs.

Richard Joseph Sullivan, of St. James's-street, in the parish of St. James, Westminster, in the county of Middlesex, esq. maketh oath and saith, That he hath been in the civil service of the East-India Company, at Madras, ever since the year 1769; and that from the year 1775 to 1777, he this deponent was, and acted as secretary in the military department there; and this deponent is still in the service of the said Company. And this deponent further saith, that the defendants and the other members of the council, who differed in opinion with lord Pigot in 1776, did at all times, when this deponent was present in council, deport themselves with decency, and with proper respect to the president; and that they also by arguments, persuasions, and remonstrances, endeavoured to dissuade lord Pigot from persevering in what they deemed his arbitrary and illegal doctrines. And this deponent further saith, that there was no summons sent to sir Ro-

bert Fletcher, Messrs. Floyer, Palmer, Jourdan, and Mackay, to attend council on the afternoon of the 23d of August, 1776; and that the said lord Pigot, with Claud Russel, Alexander Dalrymple, John Maxwell Stone, and Richard Lathom, esqrs. about four o'clock in the afternoon of the said 23d of August, 1776, did assemble and act as if they were the government. And this deponent further saith, that although Mr. Lathom had been about twelve days at the presidency, and many councils had been held after his arrival, yet that he was only called for the first time to attend the council, on the 23d of August, in the morning. And this deponent further saith, that in consequence of orders received by this deponent at the said council, held on the said 23d day of August, in the afternoon, he, this deponent, about the hour of five o'clock in the same afternoon, issued letters of suspension to Charles Floyer, Archdale Palmer, Francis Jourdan, and George Mackay, and orders were given, by the said lord Pigot, to captain Wood, the town major, to serve an order of arrest on sir Robert Fletcher; and the said lord Pigot, on the same afternoon, gave this deponent, as judge advocate, orders to prepare for trying sir Robert Fletcher by a court martial, as speedily as possible. And this deponent further saith, that he, this deponent, and many other persons, both civil and military, in the settlement, did look upon the suspension of the said George Stratton and Henry Brooke, on the 22d of August, 1776, as an unconstitutional and oppressive measure; and that by such acts, the settlement and government of Fort St. George might be involved in a state of anarchy. And that this deponent, and by far the greater number of the Company's servants, civil and military, in the settlement, whom this deponent conversed with, did firmly believe the government to be vested in a majority of the council, whether the said lord Pigot was present or not. And this deponent further saith, that after a majority of the council had delivered their joint minute in council on the 17th of June, 1776, wherein they declared, "That they meant to do no more on the Tanjore claims than to recommend to the rajah to see that justice be done, leaving the manner and time to himself, and that they had not an idea that that government ought to go further without orders from their superiors,"—no further debate or altercation, touching the said claims, were had in council to the best of this deponent's recollection and belief, during the time of the said lord Pigot's government. And this deponent further saith, that the said George Stratton and Henry Brooke, immediately at the time of their suspension by lord Pigot, on the 22d day of August, 1776, and whilst they remained in their seats at the council, wrote and delivered to this deponent in council a short protest on a slip of paper, against the legality of such proceedings, which

this deponent entered in the consultation of that day, but the said protest was afterwards expunged by the said lord Pigot, with his own hand. And this deponent further saith, that the said lord Pigot, as soon as he had declared that the said George Stratton and Henry Brooke were suspended, adjourned the Board by his own authority, whereupon the majority of the council did then declare, they should still consider the said George Stratton and Henry Brooke as legal members of the council. And this deponent further saith, that previous to, and on the said 22d day of August, 1776, he, this deponent, declared to the members of the council severally, and to the said lord Pigot also, that he, this deponent, conceived it to be his duty, as secretary, to sign and issue in the usual form any order resolved on, and dictated by a majority of the Board; and that he, this deponent, would issue such orders if so directed by such majority. And this deponent further saith, that he endeavoured to dissuade the said lord Pigot from circulating the general orders relative to the suspension of the said George Stratton and Henry Brooke, to the military, telling the said lord Pigot that he thought these measures too violent; and this deponent refused to sign the said orders of suspension, until the said lord Pigot compelled this deponent thereto, by saying, that if this deponent did not sign them, the deputy secretary, who was present, should. And this deponent further saith, that the said lord Pigot never expressed, to this deponent's knowledge or belief, any wish to accommodate the breach or misunderstanding between the two parties in council, occasioned by the suspension of the said George Stratton and Henry Brooke, which this deponent believes might have been done, and which, as he believes, most of the members in the majority were desirous of having done. And this deponent further saith, that from sundry articles of intelligence, produced and read by col. Stuart to the council, after the attempt made by Mr. Claud Russel, on the 24th day of August, 1776, to excite the main guard to resistance, the council expressed their apprehensions, and as this deponent believes, did really apprehend that lord Pigot and his friends were tampering with the military to disturb their government, which occasioned their coming to the resolution on the 27th of August, for removing the said lord Pigot to Chingleput. And this deponent further saith, he verily believes that the following words contained in the board's letter to major Horue of the 25th of August, 1776, viz. "As your last resource in any attempt to rescue lord Pigot, his life must answer for it, and this you are to signify to him," were written with no other design or intention whatsoever than to intimidate the most active of lord Pigot's friends from continuing to disturb the government, and to deter them from attempts which might endanger the lives of his lordship and

many others. And this deponent saith, that at the time of forming the said letter, the persons signing the same, declared the above-mentioned motives to be those which influenced them to use the words above referred to; and accordingly, in their order to colonel Stuart on the same day, they used the following expressions, viz. "We are extremely desirous to avoid every chance, either of public disturbances or risk to lord Pigot's life." And this deponent further saith, that notwithstanding the many provocations given by his lordship and his friends, after his suspension and removal, the majority studiously endeavoured to make his situation as little offensive as possible, and that good order was maintained by them in the government; and that the settlement, during their time, was in a flourishing condition, and that the affairs of the Company were prosperous, and that the revenues were increased beyond any former period, and the investments carefully provided for and enlarged.

THE KING upon the Information of his
ATTORNEY GENERAL,
against

GEORGE STRATTON, HENRY BROOKE,
CHARLES FLOYER, and GEORGE
MACKAY, Esqrs.

Matthew Horne of Harley-street, in the parish of St. Mary la Bonne, in the county of Middlesex, esq. a lieutenant colonel in the service of the honourable East India Company at Madras, maketh oath, and saith, That on the 24th day of August 1776, about 9 of the clock in the evening, captain Lysaght, who was then also an officer in the said East India Company's service, came to this deponent's house at St. Thomas's Mount, about 9 miles from Madras, accompanied by lord Pigot, and delivered to this deponent a paper, in the presence of the said lord Pigot, containing orders from col. Stuart, acting commander in chief of the said Company's forces, to take under this deponent's charge, the person of the said lord Pigot. And this deponent, after perusing the same, addressed his lordship, and desired to know if he knew the contents of the said orders, to which he answered, that he imagined the purport of them was for this deponent to receive him under his charge, and that he was happy they had made choice of a man whom he had long known to be a man of honour, and who, he was confident, would not suffer any indignity to be shown him; and this deponent saith, he assured his lordship he would show him every respect and attention in his power, which this deponent and his family at all times did. And this deponent accordingly immediately mounted an officer's guard, with orders to show lord Pigot the same honors he received in the fort of

Madras. And this deponent extended the said orders to the main guard, and all the centinels at the Mount. And this deponent further saith, that on the next day, the 25th of August in the morning, Messrs. Russel, Dalrymple, Stone, Lathom, Monckton, and also commodore sir Edward Hughes, and a great number of other gentlemen, visited his lordship, all of whom had free access to him. And this deponent further saith, that the said Messrs. Russel, Dalrymple, Lathom and Monckton, being discoursing in the presence of many other gentlemen, then in this deponent's house, in a manner which he conceived likely to inflame the minds of those present; this deponent showed to the said Mr. Monckton a letter, which he had received that day from the board, in which was contained the following words, viz. "As your last resource in any attempt to rescue lord Pigot, his life must answer for it; and this you are to signify to him." And this deponent saith, that when he received the said letter, he understood it was meant to deter and prevent the friends of the said lord Pigot, from attempting to rescue him, which might have put him and others in danger, and with no other view, and from no other motive whatever, as this deponent verily believes. And this deponent saith, that it was also shown to the said lord Pigot, and to several of his friends. And this deponent verily believes, it did influence the gentlemen then present, to be less violent in their discourse at his house at that time. And this deponent further saith, that his lordship's friends for some days were constantly bringing him false alarms of parties of the nabob's horse being hovering about with an intention to seize him, and at other times of parties of troops marching from Madras, although there was not the smallest foundation in truth for such reports; notwithstanding which, the friends of lord Pigot continued to propagate such alarms at different times. And this deponent further saith, That on the 28th August, 1776, lord Pigot, in speaking of the defendants and the other members of the council, by whom he had been suspended and removed, called them traitors and rebels, and other opprobrious names, and declared that he would hang every man, that was any ways concerned in depriving him of the government, or to that effect. And this deponent hath at different times heard his lordship use such threats, which, with much abuse, were also much more frequently used by the said Mr. Monckton, Mr. Russel and Mr. Stone. And this deponent further saith, that except when his lordship was disturbed by such alarms as aforesaid, his usual manner of passing his time at the Mount was, after breakfast to walk and amuse himself about the Mount, or at Mr. Monckton's house and gardens, in the conversation of that family, and in making improvements in the offices and gardens; after which, his lordship used to

return to dinner, and used the like exercise and amusements after dinner as he had done before. And that Mr. Monckton's family generally drank tea and spent the evening with his lordship at this deponent's house; and this deponent generally invited and asked such persons as came to visit his lordship, to dine with him, and this deponent and his family; and at all times, and upon all occasions, used every means in their power to render his lordship's residence easy and agreeable to him; and endeavoured to avoid taking notice of any reflections or insinuations against the then president and council, notwithstanding the said Mr. Monckton, and many other of his lordship's friends, were frequently imprudent and indecent in such reflections. And this deponent further saith, that when the packets were sent to England by lord Pigot and the council, in, or about September, 1776, his lordship appeared to this deponent, inclinable to wait the result in patience, but his friends about him constantly incited him to interfere, and he too easily came into their views. And this deponent saith, that one of their objects or designs, was to throw impediments in the way of the then government, relative to the quarter sessions; and the said Messrs. Russel, Monckton, and Stone, were constantly bringing to lord Pigot letters and advices from their correspondents, and were the means of his countenancing many measures which they imagined would keep up the spirit of their party, and throw difficulties in the way of the then government. And this deponent further saith, that at, or about the time when the board sent lord Pigot an offer to reside at any of the chiefships, or to proceed to England, he, this deponent, had some discourse with his lordship about accepting the offer, but he would not hear of any thing that looked like acquiescing in any offer, or measure, with the members of the then government. And this deponent, on another conversation with lord Pigot on the same subject, intimated his belief, that if he rather chose to remain at the Mount, and would give his word of honor to remain quiet, and not in any manner disturb the then government, until the Company should decide between his lordship and them, they would not think of sending his lordship to Europe, or even of keeping him longer under restraint; but his lordship's answers were, that he would never dishonour himself by entering into promises, or having any manner of engagements, or hold any faith, with men who had stripped him of his government, and were rebels. And this deponent further saith, that the said lord Pigot never was under any restraint whatever, except going into the garrison of Fort St. George, which this deponent would have thought it his duty, under such circumstances, to have endeavoured to prevent; and that no limits were ever assigned to his lordship, nor were the distance of his walks ever prescribed,

or any distance or bounds whatever fixed where his lordship should go, either by this deponent or any other person whatever. And that so far from limiting his lordship to any distance, this deponent, on the contrary, soon after his lordship's arrival at the Mount, used to intimate to him, that he used to ride an airing in a morning with his daughters, that the rides were fine about the Mount, and that it would amuse him. And this deponent further saith, that one of lord Pigot's daughters being indisposed, this deponent suggested to his lordship in the most delicate manner he could, that perhaps his lordship driving her out early in the morning might contribute to her recovery. And this deponent at different times repeated these intimations, and lest he should decline on an idea that the officer on duty must have gone in the carriage with them, this deponent informed his lordship that Mrs. Horne and himself would have pleasure in accompanying them, with this deponent's chaise. And this deponent saith, that at one of the times when he was pressing lord Pigot on matters of this kind, his lordship mentioned some of the nabob's horse being kept at the Mount, who were in number about

whereupon this deponent assured his lordship as the truth was, that no use whatever ever had been, or ever was intended to be made of them, but the carrying the letters to and from Madras, and that as his lordship disliked their being there, he, this deponent, would apply to have them recalled; and accordingly this deponent wrote to the defendant Mr. Stratton, that morning, and they were instantly recalled. And this deponent saith, that the party of horse above mentioned were those referred to in the postscript of the above mentioned letter to this deponent, dated the 25th of August, 1776, and that they never were, to the knowledge or belief of this deponent, meant, or intended to be used for any other purpose but that of conveying speedy intelligence to and from the Mount, and Fort St. George. And this deponent further saith, that at different times he discoursed with lord Pigot touching the forming parties of pleasure, and proposed going upon one to Covelang, and another to Vandalore, (about twelve miles from the Mount) which his lordship approved; but one day at dinner, when discoursing thereon, this deponent proposed to his lordship taking a ride the next afternoon to a cave on the side of a hill, about four miles off, to drink tea, and engaging Mr. Monckton's family to accompany them, whereupon his lordship proposed going that afternoon with only the company then present, which proposal was immediately put in execution, his lordship taking Mrs. Horne in his chaise; and this deponent saith, that they rambled on the hills and drank tea, and were remarkably happy on the occasion, and returned home about seven o'clock in the evening, when they found that lord Pigot's friends, on hearing that he was rode out, immediately declared, as this deponent

ment hath been informed, and believes, that it was a scheme laid to trepan or kidnap his lordship, and immediately sent out messengers on different roads to pursue and bring intelligence which way he was carried, and that such messengers went as far as Vandalore (about twelve miles from the Mount) on full speed, and hearing nothing of his lordship returned. And this deponent saith, this conduct of lord Pigot's friends vexed him much, and prevented his engaging in future in excursions of the kind. And this deponent further saith, that after his lordship's first indisposition, which was in the month of March, 1777, he very seldom dined at this deponent's house, but generally at the house of Mr. Monckton, where, and in his gardens adjoining, he spent the greatest part of his time by day. And this deponent further saith, that his lordship's saddle horse was every morning brought to him ready for him to ride out if he chose to have done so; and that this deponent never gave any orders or directions whatever to the officers on duty, to restrain him from going wherever he pleased, nor did any of such officers, to the knowledge or belief of this deponent, ever restrain his lordship in any respect whatever. And this deponent further saith, that every possible mark of respect and attention was shewn to lord Pigot by this deponent and his family, and that this deponent gave orders and directions to all the officers and soldiers under his command to pay his lordship the same military honors, that were paid him when governor of Fort St. George, and that in consequence of these orders such honors were paid constantly to him accordingly.

THE KING, upon the Information of his
ATTORNEY GENERAL,
against

GEORGE STRATTON, HENRY BROOKE,
CHARLES FLOYER, and GEORGE
MACKAY, Esqrs.

George Stratton, esq. Henry Brooke, esq. Charles Floyer, esq. and George Mackay, esq. the defendants above-named, severally make oath and say, that the manner of executing the resolutions and orders of the 23d and 27th of August, 1776, for securing and removing the person of lord Pigot, were left entirely to colonel Stuart, who was to carry those measures into execution by such means as to him seemed most likely to prevent danger to his lordship, and every other person of the settlement; but what means he would use, these deponents were unacquainted with; and it was not till after lord Pigot was removed on the 24th of August, 1776, that these deponents ever heard that the said colonel Stuart had borrowed Mr. Benfield's chaise on that day, for the purpose of removing his lordship to the Mount. And these deponents further

say, that until the motion made by admiral Pigot in the House of Commons, in the month of April, 1779, they never heard that the said Mr. Benfield's chaise had been again borrowed by the said colonel Stuart on the said 27th of August, for the purpose of removing lord Pigot to Chingleput. And these deponents further severally say, that, to the best of their remembrance and belief, the said colonel Stuart, in August, 1776, had no horses broke in, or that could be used in his own chaise, and that he used frequently to borrow the horses and chaise of the said Mr. Benfield, who was reputed to have the best in the settlement.

THE KING, upon the Information of his
ATTORNEY GENERAL,
against

GEORGE STRATTON, HENRY BROOKE,
CHARLES FLOYER, and GEORGE
MACKAY, Esqrs.

Richard Joseph Sullivan, late military secretary of the council of Fort St. George, maketh oath and saith, that he well remembers the defendant, Charles Floyer's arrival in India, on or about the 3d day of June, 1776; and that on his arrival he was summoned to attend as one of the council, on the 6th day of the said month of June; and that he did accordingly attend such council on that day, but no material business was then transacted: that on the 10th of June another council was summoned respecting the mortgages and claims of Mr. Paul Benfield, at which council, and also at the council on the 13th of the same month of June, the said Charles Floyer objected to giving his vote, and earnestly requested to be excused giving any vote, and desired to be dispatched to Masulipatam, of which place he was expressly appointed chief by the court of directors in England, on an event which had then happened. And this deponent further saith, that the said Charles Floyer was required by the late lord Pigot, the then president, and the council at Fort St. George, to come into, and to act and give his vote as one of the said council, respecting the said claims and mortgages; and that the said Charles Floyer and lord Pigot, were, as this defendant verily believes, in good terms of friendship. And this deponent further saith, he verily believes the said Charles Floyer wished much to go to his chiefship of Masulipatam, and that his vote in council was given honestly and truly, and according to the real sentiments formed by the said Charles Floyer respecting the said business. And this deponent further saith, that he was present in the council on the 13th or 14th day of June, 1776, when the said Charles Floyer delivered in to the board his opinion on the question respecting Mr. Paul Benfield's claims; and that very soon after he had given his vote

on the said subject, he, to the best of this deponent's remembrance, expressed his earnest wish to the board, that they would come to the resolution of obeying the positive orders of the court of directors, for the said Charles Floyer to repair immediately to his chiefship of Masulipatam, when the said lord Pigot addressed himself to the said Charles Floyer, and declared, that he should look upon any man as his enemy who dared to give his vote against him at that board, or words to that or the like effect; and that in case any place of trust or emolument in the service should become vacant, such person should never be appointed thereto, if he could possibly prevent it; and that as the said Charles Floyer had done so, he should most certainly do every thing in his power to prevent his nomination to Masulipatam from taking place, or used words to that or the like effect. And this deponent further saith, that on or about the 2d day of October, 1776, the said Charles Floyer left Fort St. George, and went to his chiefship of Masulipatam; and that he never acted in the council, or interfered in the government of Madras, until the month of July, 1777, after the decease of lord Pigot, when he came to Madras to settle some of his own affairs. And this deponent further saith, that during all the times the said Charles Floyer acted as one of the council, and when the debates became high between the late lord Pigot and some of the said council, the said Charles Floyer did endeavour, to the utmost of his power, to accommodate such disputes, and to preserve peace, harmony, and good fellowship, amongst them.

Mr. *Solicitor General* stated, that this was an offence of the greatest enormity: it was the imprisonment of the governor of one of the principal settlements of the East-India Company, and who was also commander of the army, and usurping to the defendants the government and the command of the army. The defence is the necessity of the act. Are there any circumstances to apologize for the conduct of the defendants? There are no circumstances to induce civil necessity. There was no danger of war, nor any injury to the Company: no suspicion to treachery in lord Pigot. The conduct of lord Pigot was, as they say, illegal, in assuming powers which were not his due. There was no personal danger to any of the defendants. All his lordship's offence was, that he said he was not bound even by a majority of the council: their authority, and the exercise of their offices, were the only things in any danger. All lord Pigot's endeavours were, to carry into honourable execution, all the orders of the Company to restore the rajah. He was restored, indeed, to his country; but Benfield's claims to the crops of that country, produced all this mischief. Is there any idea that the rejection of Benfield's claims would have caused any war?—No: the defendants, without

any act of lord Pigot's, to injure the Company, and with a view only to hold an usurped authority of their own, they imprison their governor. Nobody will seriously contend, that it justifies their conduct:—it does not even offer an apology for it. The Court can only inflict the proper measure of punishment, by rendering the defendants incapable, in future, of holding any offices. The defendants were brought home under this charge, and have been convicted of it; and if they are permitted to return to India, in offices of high trust, what must people in that country think of this? It would disgrace the justice of this country. Fines are nothing to men of the fortunes of the defendants; and imprisonment would not be much regarded. There is no way of affecting the defendants but by incapacitation.

Mr. *Rous* was very strenuous for a severe sentence. He entered into a long detail of the Tanjore war, of the conduct of the Company's servants respecting it, and a variety of other matters, tending to explain the powers and instructions with which lord Pigot was invested. He stated, that it was the duty of the defendants to have obeyed the orders of the Company without resistance; but that their object was, to continue the revenues of Tanjore to the nabob, in contradiction of the orders from the Company, and their own sense of those orders. The approbation of the governor and council of Bengal, is the only letter subsequent to the transaction. In their letter to the defendants, dated the 10th of September, as far as their reasons for their disapprobation go, they are false: the reason for this was, that the source of their information was the nabob. Their disapprobation of the conduct of lord Pigot, was founded on the information of the nabob: from him all the complaints against his lordship originated, and were by him presented to the governor general and council, before the disputes between lord Pigot and his council existed. They had no right to interfere, except only in questions of peace and war. It is true, that the Company resolved, by a majority of 380 to 64, to restore lord Pigot, and to recal the defendants; and it is true, too, that they afterwards altered their opinion. The cause that produced this change, I shall state: The Company passed the first order when they were unbiassed and uninfluenced; but before it was executed, the private secretary of the nabob, and one of his avowed agents, arrived; they brought arguments of weight with them; and they, in conjunction with the solicitor of the Treasury, and a herd of ministerial dependants, were busily employed to prevent justice: and I profess to entertain no very great veneration for the subsequent difference of opinion. The intention of the defendants is evident, from the consultation of the 14th of June, and the proposition of Mr. Mackay at that consultation.

The revenues consist of part of the crop reserved to the government. That crop,

which is reaped in April, is the effective revenue. The defendants knew that the nabob had mortgaged all the revenue.

The Court, in determining the punishment of the defendants, will consider the effects of their conduct. Lord Pigot was imprisoned eight months, and perished in that imprisonment, under the hands of the defendants. The Court will, therefore, make imprisonment a part of the punishment. The Court cannot, indeed they dare not, send midnight ruffians to assassinate the defendants.

Mr. Rous insisted, that the Court would not judge of the motives of the defendants from their own affidavits; but that until the secrets of all hearts should be known, human tribunals could judge of men's intentions, only from the actions which were the effects of such intentions. He stated, that the situation of the defendants, at the time they committed this offence, very much aggravated its enormity: they were then in the execution of a public trust, sworn to the proper discharge of their duty. He said, that in the House of Commons, the vote for a prosecution passed in a very full House, without one dissentient voice. Even upon Mr. Stratton's representation of the business, no man was there found hardy enough, profligate enough to oppose it. He continued; the defendants have been found guilty: and the Court are now to determine, whether by a slight punishment, they will encourage future revolutions, or by a just severity, secure permanent that part of the British dominions which alone is prosperous.

Mr. Dunning assured himself, that incapacitation would not be part of the sentence. He said, that the acts for regulating the affairs of the Company, are not imperative on this Court to inflict that punishment. The Court cannot judge of the propriety of depriving the Company of the services of the defendants: and if it shall appear to the Company, that the defendants are improper persons to be employed by them, they may reject them without the assistance of the Court. Mr. Dunning urged many arguments, to prove that the defendants had not acted from any criminal motive. He acknowledged, that he could not make out a strict *legal* justification of his clients' conduct; but insisted that the Court, in determining their sentence, would consider the intentions by which they were actuated: that if the heart was right, they would not punish the errors of the head; and concluded upon the whole, that the Court would inflict as mild a punishment as was in their power.

Saturday, February 6.

Mr. Wilson stated, that the acts of lord Pigot, in suspending the members of the council, were subversive of the constitution. The defendants were obliged either to submit, and suffer his lordship to deprive them

of that authority with which they had been invested by the orders of the Company, or to do the very thing which they did. The steps taken were absolutely necessary, in order to take the government into their own hands. If lord Pigot had been king of Madras, and the government had been such by compact, as it was by the charter and orders of the Company, even in that case, the resistance of the defendants would have been meritorious. He stated, that there is no compulsion on the Court to incapacitate the defendants; that justice does not call for it; for it appears, that under their government the settlement of Madras was in a more flourishing condition than in any other period. If the Court should imprison the defendants, it would (he said) be the first case in which that punishment was inflicted for doing what the defendants at that time thought right, and which many thought legal. They have been mistaken in point of law; but that mistake was attended not with bad, but beneficial effects to the public.

Mr. *Chambre* said, there were no grounds even for a suspicion, that the defendants had acted from any corrupt motives: their offence proceeded only from an error in judgment: and he stated Mr. Floyer's case, as peculiarly unfortunate; for that he had been appointed chief or resident at Masulipatam, and requested to go there, but was forced by the board to remain and vote. He stayed at Madras four months, and lost all the emoluments of his appointments. He swears he has lost many thousand pounds.

Mr. *Arden* said, the defendants had not been convicted of the offence imputed to them, with intent to prevent the execution of the orders of the East India Company; such an intention was not alleged, or insisted on at the trial. That the commission under which the defendants acted, had been said to be very clear; but he said, it had been mistaken even by men conversant in law. That in a pamphlet, avowed by a gentleman, who was very active in the prosecution, (*Dalrymple*), it had been attempted to prove, that lord Pigot had a negative vote. He admitted, that lord Pigot was, as governor, an integral part of the constitution; but insisted, that if the defendants were assembled with him, then every act they did was legal. He said, if it appeared to the Court, that the defendants acted with a bad intention, their conduct would call for a severe punishment. He said, it had been asked by Mr. Rous, what people in India would think of the justice of this country, if the defendants should return in power? He asked what they would think, if they should find, that the defendants were incapacitated from holding any offices?—They would naturally enquire whether their conduct was disapproved in this country, whether it was proved that they acted from corrupt motives, that they would think these circumstances necessary to justify a severe sentence.

Mr. *Piggott* made a very sensible speech on the same side.

The Hon. *Thomas Erskine* :*

My lord; I really do not know how to ask, or even to expect, the attention of the Court; I am sure it is no gratification to me, to try your lordships' patience on a subject so completely exhausted; I feel, besides, that the array of counsel assembled on this occasion, gives an importance and solemnity to the conviction which it little deserves, and carries the air of a painful resistance of an expected punishment, which it would be a libel on the wisdom and justice of the Court to expect.

But in causes, which, from their public nature, have attracted the public notice, and in which public prejudices have been industriously propagated and inflamed, it is very natural for the objects of them to feel a pleasure in seeing their actions (if they will bear a naked inspection) repeatedly stripped of the disguise with which the arts of their enemies had covered them, and to expect their counsel to be, as it were, the heralds of their innocence, even after the minds of the judges are convinced. They are apt, likewise, and with some reason, to think, that, in *this* stage of a prosecution, surplusage is less offensive, the degree of punishment not being reducible to a point like a legal justification, but subject to be softened and shaded away by the variety of views in which the same facts may be favourably and justly presented, both to the understanding and the heart. Such feelings, my lord, which I more than guess are the feelings of my injured clients, must be my apology for adding any thing to what my learned leaders have already, I think, unanswerably urged in their favour. It will be, however, unnecessary for me to fatigue your lordship with a minute recapitulation of the facts; I shall confine myself to the prominent features of the cause.

The defendants are convicted of having assumed to themselves the power of the government of Madras, and with having assaulted and imprisoned lord Pigot. I say, they are convicted of *that*, because, although I am aware that the general verdict of guilty includes, likewise, the truth of the first count of the information, which charges the obstruction of lord Pigot in carrying into execution the specific orders of the Company, yet it is impossible that the general verdict can at all embarrass the Court in pronouncing judgment, it being notorious on the face of the evidence, first, that there were no direct or specific orders of the Company touching the points which occasioned either the original or final differences, the rajah of Tanjore being,

before the disputes arose, even beyond the letter of the instructions, restored and secured. Secondly, that the instructions, whatever they were, or however to be construed, were not given to the single construction of lord Pigot, but to him and his council, like all the other general instructions of that government.

The Company inclined that the rajah of Tanjore should be restored without infringing the rights of the nabob of the Carnatic; but how such restoration and security of the rajah could, or was to be effected without the infringement of those rights of the nabob which were not to be violated, the Company did not leave to the single discretion of lord Pigot, but to the determination of the ordinary powers of the government of Fort Saint George, acting to the best of their understandings, responsible only, like all other magistrates and rulers, for the purity of their intentions.

It is not pretended that the Company's instructions directed the rajah's security to be effected by the residence of a civil chief and council in Tanjore, or by any other civil establishment whatsoever: on the contrary, they disavow such appropriation of any part of the revenues of that country; yet the resisting a civil establishment in the person of lord Pigot's son-in-law, Mr. Russel, destined too by the Company for a different and incompatible service, is the specific obstruction which is the burden of the first count of the information, and which is there attempted to be brought forward as an aggravation of the assumption of the general powers of the government; the obstruction of what was not only not ordered by the Company, but of which their orders implied, and in public council were admitted by one of lord Pigot's adherents to imply, a *disapprobation and prohibition*.

The claims of Mr. Benfield, the subject of so much slanderous declamation without proof, or attempt of proof, and, what is more extraordinary, without even charge or accusation, are subject to the same observations: the orders to restore the rajah to the possession of his country, certainly did not express, and, if my judgment does not mislead me, could not imply, a restitution of the crops sown with the Prince's money, advanced to the inhabitants on the credit of the harvest, without which, universal famine would have ensued.

Had the nabob, indeed, seized upon Tanjore in defiance of the Company, or even without its countenance and protection, he would, no doubt, have been a *malâ fide* possessor *quoad* all transactions concerning it with the Company's servants, whatever the justice of his title to it might in reality have been; and the Company's governors, in restoring the rajah, paying no respect to such usurped possession, would have been justifiable in telling any European who had lent his money on the security of Tanjore—Sir, you have lent your money with your eyes open, to a person,

* The following report of this justly celebrated Speech, is taken from p. 35, of the 'Speeches of lord Erskine when at the bar on Miscellaneous subjects,' in which publication it was first printed.

whose title you knew not to be ratified by our approbation, and we cannot, therefore, consider either his claim or yours derived from it. But when the nabob was put into possession by the Company's troops; when that possession, so obtained, was ratified in Europe, at least by the silence of the Company, no matter whether wisely or unwisely, justly or unjustly; and, after the nabob had been publicly congratulated upon such possession, by the King's plenipotentiary in the presence of all the neighbouring princes in India; I confess I am at a loss to discover the *absurdity* (as it has been called) of the nabob's pretensions; and it must be remembered, that Mr. Benfield's derivative title was not the subject of dispute, but the title of the nabob, his principal, from whence it was derived; I am, therefore, supported by the report of the evidence, in saying, that it does not appear that the differences in council arose, were continued, or brought to a crisis, on points where lord Pigot had the Company's orders, either express or implied, to give any weight to his single opinion beyond the ordinary weight allotted to it by the constitution of the settlement, so as to justify the Court to consider the dissent of the majority from *his measures*, to be either a criminal resistance of the President, or a disobedience of the Company's specific or general instructions.

Thus perishes the first count of the information, even if it had been matter of charge! But much remains behind. I know it is not enough that the Company's orders were not specific touching any of the points on which the differences arose, or that they were silent touching the property of the crop of Tanjore, or that the nabob's claim to it had the semblance, or even the reality of justice; I admit that it is not sufficient that the defendants had the largest and most liberal discretion to exercise, if that discretion should appear to have been warped by bad, corrupt, or selfish motives; I am aware, that it would be no argument to say, that the acts charged upon them were done in resistance of lord Pigot's illegal subversion, if it could be replied upon me, and that reply be supported by evidence, that such subversive acts of lord Pigot, though neither justifiable nor legal, were in laudable opposition to their corrupt combinations. I freely admit that, if such a case were established against me, I should be obliged to abandon their defence; because I could apply none of the great principles of government to their protection; but, if they are clear of such imputations, then I *can* and *will* apply them *all*.

My lord, of this bad intention there is no proof; no proof did I say? there is no charge! —I cannot reply to *slander* here. I will not debase the purity of the Court by fighting with the phantoms of prejudice and party, that are invisible to the sedate and sober eye of justice! If it had been a private cause, I would not have suffered my clients, as far

as my advice could have influenced, to have filed a single affidavit in support of that integrity upon which no complaint attached, and which no evidence had impeached; but, since they were bound like public victims, and cast into this furnace, we wished them to come forth pure and white; their innocence is, therefore, witnessed before your lordships, and before the world, by their most solemn oaths; and it is surely no great boon, to ask credit for facts averred under the most sacred obligations of religion, and subject to criminal retribution *even here*, which you are bound, in the absence of proof, not only in duty as judges, but in charity as men, to believe without any oaths at all.

They have denied every corrupt motive and purpose, and every interest, directly or indirectly, with Mr. Benfield, or his claims.—But, says Mr. Rous, Benfield was a man of straw set up by *the Nabob*; be it so;—they have positively sworn that they had no interest, directly or indirectly, in the claims of *the Nabob himself*; no interest, directly or indirectly, in the property of the crop of Tanjore; no interest, directly or indirectly, beyond their duty, in the preference of colonel Stuart's appointment to Mr. Russel's; nor any interest, direct or indirect, in any one act which is the subject of the prosecution, or which can, by the most collateral direction, be brought to bear upon it. Such are the affidavits; and, if they be defective, the defect is in us. They protested their innocence to us, their counsel, and, telling us that there was no form in which language could convey asseverations of the purity of their motives, which they could not with a safe conscience subscribe to, they left it *to us* to frame them in terms to exclude all evasion.

But *circumstances* come in aid of their credit stronger than all oaths: men may swear falsely; men may be perjured, though a court of justice cannot presume it; but human nature cannot be perjured. They did not do the very thing, when they got the government, for which they are supposed to have usurped it. The history of the world does not afford an instance of men wading through guilt for a purpose which, when within their grasp, they never seized or looked that way it lay.

When Mr. Benfield first laid his claims before the board, lord Pigot was absent in Tanjore, and Mr. Stratton was the legal governor during his absence, who might therefore have, in strict regularity, proceeded to the discussion of them; *but he referred them back to lord Pigot, and postponed that discussion till his return*; when, on that discussion, they were declared valid by a legal majority, they neither forced them, nor threatened to force them on the rajah, but only recommended it to him to do justice, leaving the time and the manner to himself; and, when at last they assumed the government, they did not change their tone with their power; the rajah was left unrestrained as before, and, at

this hour, the claims remain in the same situation in which they stood at the commencement of the disputes; neither the nabob nor Mr. Benfield have derived the smallest advantage or support from the revolution in the government.

This puts an end to all discussion of Indian politics, which have been artfully introduced to puzzle and perplex the simple merits of this cause; I have no more to do with the first or second *Tanjore* war, than with the first or second *Carthaginian* war; I am sorry, however, my absence yesterday in the House of Commons prevented me from hearing the history of them, because, I am told, Mr. Rous spoke with great ability, and, I am convinced from what I know of his upright temper, with a zeal, that, for the moment, to his own bosom justified what he said; but, if I am not misinformed, his zeal was his only brief; his imagination and resentment spurred the fetters both of fact and accusation, and his acquaintance with Indian affairs enabled him to give a variety to the cause, by plausible circumstances, beyond the reach of vulgar, ignorant malice to invent. It was calculated to do much mischief, for it was too long to be remembered, and too unintelligible to be refuted; yet I am contented to demand judgment on my clients on Mr. Rous's terms: he tells your lordship, that their intentions cannot be known till that time when the secrets of all human hearts shall be revealed, and then, in the very same breath, he calls for a punishment as if they were revealed already. It is a new, ingenious, and summary mode of proceeding—*festinum remedium*, an assize of conscience.—If it should become the practice, which, from the weight of my learned friend, I have no manner of doubt it will, we shall hear such addresses to juries in criminal courts as this:—Gentlemen, I am counsel for the prosecution, and I must be candid enough to admit, that the charge is not proved against the defendants; there is certainly no legal evidence before you to entitle the crown to your verdict; but, as there is little reason to doubt that they are guilty, and as this deficiency in the evidence will probably be supplied at the day of judgment, you are well warranted in convicting them; and if, when the day of judgment comes, both you and I should turn out to be mistaken, they may move for a new trial.

This was the *general* argument of guilt; and, in the *particulars*, the reasoning was equally close and logical. Now, says Mr. Rous, can it be believed that the *Tanjore* crop was not the corrupt foundation of the defendants' conduct, when it appears from day to day, on the face of all the consultations, as the single object of dispute? That it was the object of dispute, I shall, for argument's sake, admit; but does Mr. Rous's conclusion follow from the admission of his premises? I will tell him why it does not; it is so very plain a reason, that, when he

hears it, he will be astonished he did not discover it himself. Let me remind him, then, that all the inferences which connexions with the Nabob so amply supplied on the one hand, connexions with the Rajah would as amply have supplied on the other. If the *Tanjore* crop was the bone of contention, the Rajah, by keeping it, had surely the same opportunity of gratitude to his adherents, that the nabob had to his by snatching it from him. The appointment of Mr. Russel, to the residency of *Tanjore*—Mr. Russel, the friend, the confidant, the son-in-law of lord Pigot—was surely as good a butt for insinuation as colonel Stuart, for the whole council. The hall might, therefore, have been thrown back with redoubled violence; and I need not remind the Court, that the cause was conducted on our part by a gentleman whose powers of throwing it back it would be folly in me to speak of; but he nobly disdained it; he said he would not hire out his talents to scatter insinuation and abuse, when the administration of right and justice did not require it; and his clients, while they received the full, faithful, and energetic exercise of his great abilities, admired and applauded the delicate manly rectitude of his conduct; they felt that their cause derived a dignity and a security from the MAN, greater than the advocate, and even than such an advocate, could bestow.

I shall follow the example of Mr. Dunning. God forbid, my lord, that I should insult the ashes of a brave man, who, in other respects, deserved well of his country; but let me remind the gentlemen on the other side, that the honour of the LIVING is as sacred a call on humanity and justice as the memory of the DEAD.

My lord, the case, thus stripped of the false colours thrown upon it by party defamation, stands upon plain and simple principles, and I shall, therefore, discuss it in the same arrangement which your lordship pursued in summing up the evidence to the jury at the trial, only substituting alleviation for justification.

First, In whom did the ordinary powers of the government of Madras reside?

Secondly, What acts were done by lord Pigot, subversive of that government?

Thirdly, What degree of criminality belongs to the confessedly illegal act of the defendants, in assuming to themselves the whole powers of the government, so subverted? I say, so subverted; for I must keep it constantly in the eye of the court, that the government was subverted, and was admitted by your lordship, at the trial, to have been subverted by lord Pigot, before it was assumed by the majority of the council.

First, then, in whom did the government of Fort St. George reside? And, in deciding this question, it will not be necessary to go, as some have done, into the general principles of government, or to compare the deputation of a company of merchants with great political

governments, either ancient or modern. The East India Company, being incorporated by act of parliament, derived an authority from their charter of incorporation, to constitute inferior governments, dependant on them for the purposes of managing their concerns in those distant parts:—had the Company, at the time the charter was granted, been such an immense and powerful body as it has since become from the trade and prosperity of the empire, it might have happened that the forms of these governments would have been accurately chalked out by parliament, and been made part of the charter; in which case, the charter itself would have been the only place to have resorted to for the solution of any question respecting the powers of such governments, because the Company, by the general law of all corporations, could have made no by-laws, or standing orders, repugnant to it; but, on the other hand, the charter having left them at liberty, in this instance, and not having prescribed constitutions for their territorial governments in India, there can be no possible place to resort to for the solution of such questions, but to the commissions of government granted by the Company; their standing orders, which may be considered as fundamental constitutions; and such explanatory instructions as they may, from time to time, have transmitted to their servants for the regulation of their conduct;—by these, and these alone, must every dispute arising in the governments of India be determined, except such as fall within the cognizance of the act of the 13th of George 3rd, for the regulation of the Company's affairs, as well in India as in Europe.

First, then, as to the commission of government, where the clause, on which they build the most, is made to run thus: "And to the end that he might be the better enabled to manage all the affairs of them the said Company, they appointed certain persons, therein named, to be of their council at Fort St. George." These words would certainly imply the president to be an integral and substantive part distinct from the council; but, unfortunately, no such words are contained in the commission of government, which speaks a very different language, almost in itself conclusive against the proposition they wish to establish. The words are, "And to the end that the said George lord Pigot might be the better enabled to manage all the affairs of us, the said Company, we do constitute and ordain George Stratton, esq. to be SECOND in our council of Fort St. George, to wit, TO BE NEXT IN THE COUNCIL after our said president George lord Pigot." It is impossible for the English language more plainly to mark out the president to be merely *the first in council*, and not an integral substantive part, *assisted by a council*; for, in such case, Mr. Stratton, the senior counsellor, would, it is apprehended, be called the *first in council*, instead of the *second in council*, to wit, next after the

president; and this clause in the commission, so explained, not only goes far by itself to resist the claim of independence in the president, but takes off from the ambiguity and uncertainty which would otherwise cloud the construction of the clause that follows, viz. "And we do hereby give and grant unto our said president and governor George lord Pigot, and to our council afore-named, or the major part of them, full power and authority, &c." The president and council being here named distinctly, the word *them*, without the foregoing clause, might seem to constitute the president an integral part, and separate from the council; but the president, having been before *constructively* named as the *first in council*; Mr. Stratton, though the senior counsellor, being expressly named the *second*, it is plain the word *them* signifies *the majority of such council, of which the president is the first*, and who is named distinctly, not only by way of pre-eminence, but because all public bodies are called and described by their corporate names, and all their acts witnessed by their common seals, whatever their internal constitutions may be. No heads of corporations have, by the common law of England, any negative on the proceedings of the other constituent parts, unless by express provision in their charters; yet all their powers are given to them, and exercised by them, in their corporate names, which ever makes the head a party, although he may be dissentient from the act that receives authority from his name.

The standing orders of the Company, published in 1687, and in 1702, which may be considered as fundamental constitutions, are plain and unequivocal; they enjoin, "That all their affairs shall be transacted IN COUNCIL, and ordered and managed as the MAJORITY OF THE COUNCIL shall determine, and not otherwise on any pretence whatsoever." And again, "That whatever is agreed on by the MAJORITY shall be the order by which each one is to act; and every individual person, *even the dissenters themselves*, are to perform their parts in the prosecution thereof."

The agreement of the majority being denominated an ORDER, shews as clearly as language can do, that obedience is expected to their determination; and it is equally plain, that no constituent member of that government can frustrate or counteract such order, since each individual, *even the dissenters themselves*, are commanded to act in conformity to it, and to perform their parts in the prosecution thereof. In speaking to dispassionate men, it is almost needless to add any arguments to show that the president's claim to refuse to put a question, adopted by a majority of council, stands upon the very same grounds as his claim to a negative on their proceedings, and that, if the first be overturned, the second must fall along with it; for if he be not an integral part of the government, and his concurrence be consequently not necessary to constitute an act of it, then

his office as president, *with respect to putting questions*, must necessarily be only ministerial, and he cannot obstruct the proceedings by refusing to put them; for, if he could, his power would be equal in effect to that of an integral part; and it would be a strange solecism indeed, if, at the same time that all the affairs of the government were to be managed and ordered by the opinions of a majority, the president could prevent such opinions from ever being collected; and, at the same time that their acts would bind him, could prevent such acts from ever taking place. But it is altogether unnecessary to explain, by argument and inference, that which the Company, who are certainly the best judges of their own meaning, have explained in absolute and unequivocal terms by their instructions sent by Mr. Whitehill to Madras, explanatory of the new commission, by which they expressly declare the government to be in the *major part of the council*, giving the president, or the senior counsellor in his absence, a casting vote, and directing *that every question proposed in writing by any member of council, shall be put by the governor, or, in his absence, by the senior member acting as president for the time being; and that every question, carried by a majority, shall be deemed the act of the president and council.* Indeed, the uniform determinations of the directors on every occasion where this question has been referred to them, have been in favour of the majority of council; even so late as the 21st of April 1777, *subsequent to the disturbances at Madras*, it will be found upon their records to have been resolved by ballot, "*That the powers contended for and assumed by lord Pigot, are neither known in the constitution of the Company, nor authorised by charter, nor warranted by any orders or instructions of the court of directors.*" It is clear, therefore, beyond all controversy, that the president and council were, at all times, bound and concluded by the decision of the majority, and that it was his duty to put every question proposed by any member of the board.

Had these regulations been made part of the *new* commission, they might have been considered as a *new* establishment, and not as a recognition of the *former* government; and consequently such regulations, subsequent to the disturbances, could be no protection for the majority acting under the *former* commission; but the caution of the East India Company, to exclude the possibility of such a construction, is most striking and remarkable: sitting down to frame a new commission under the immediate pressure of the difficulties that had arisen from the equivocal expressions of the former; they, nevertheless, adopt and preserve the very same words in all the parts on which the dispute arose, the two commissions differing in nothing except in the special preamble restoring lord Pigot; and the object of this caution is self-evident, because, if, instead of thus preserving the

same form, and sending out collateral instructions to explain it, they had rendered the new commission more precise and unequivocal by *new modes of expression*, it would have carried the appearance of a *new* establishment of what the government should in *future* be, and not as a recognition and definition of what it *always had been*; but by thus using the same form of commission, and accompanying it with explanatory regulations, they, beyond all dispute, pronounced the former commission always to have implied what they expressly declare the latter to be, as it is impossible to suppose that the Company would make use of the same form of words to express delegations of authority diametrically opposite to each other. But, taking it for argument's sake, to be a new establishment rather than a recognition, still it is a strong protection to the defendants. If the question, indeed, were concerning the regularity of an act done by the majority, without the president, coming before the Court by a person claiming a franchise under it, or in any other *civil* shape where the constitution of the government was in issue, my argument, I admit, would not hold; the Court would certainly, in *such case*, be obliged to confine itself strictly to the commission of government, and such explanatory constitutions as were precedent to the act, the regularity of which was the subject of discussion; but it is very different when men are prosecuted *criminally* for subverting a constitution, and abusing delegated authority: they are not to be punished, I trust, for the obscurity of their employers' commissions, if they have been fortunate enough, notwithstanding such obscurity, to construe them as they were intended by their authors: if their employers declare, even after an act done, *This is what we meant should be our government*, that ought to be sufficient to sanction previous acts that correspond with such declarations, more especially declarations made on the spur of the occasion which such previous acts had produced; for otherwise this monstrous supposition must be admitted, viz. That the Company had enlarged the power of their servants, because they had, in defiance of their orders, assumed them when they had them not; whereas, the reasonable construction of the Company's subsequent proceeding, is this: *It is necessary that our council, on the president's refusing to perform his duty, should have such powers of acting WITHOUT HIM, as they have assumed in the late emergency; the obscurity of our commissions and instructions has afforded a pretence of resistance, which has obliged our servants either to surrender the spirit of their trusts, or to violate the form; to prevent such disputes in future, we do that, HITHERTO UNKNOWN; we make a regular form of government, and, at the same time, prescribe a rule of action in case it should not act up to the end of its present institution, to prevent an exercise of discretion ab-*

ways, if possible, to be avoided in every government, but more especially in such as are subordinate. Therefore, my lord, whether the late instructions be considered as explanatory, or enacting, they ought to be a protection to the defendants in a criminal court, unless when their employers are the prosecutors. Neither parliament, nor the crown, ought to interfere; but, as they have done it, no evidence ought to have convicted them of assuming the powers of government, and obstructing the Company's service, but the evidence of the directors of that Company under whom they acted. They ought not to be judged by blind records and parchments, whilst the authors of them are at hand to explain them. It is a shocking absurdity to see men convicted of abusing trusts, when the persons who gave them are neither prosecutors nor witnesses against them.

The ordinary powers of the government of Madras being thus proved to have resided in the majority of the council, it now only remains to shew, by a short state of the evidence, the necessity which impelled the extraordinary, and otherwise unwarrantable exercise of such powers in suspending and imprisoning lord Pigot; for they once more enter a protest against being thought to have assumed and exercised such power as incident to their commission, while the government subsisted. It is their business to show, that, as long as the government continued to subsist, they faithfully acted their parts in it; and that it was not till after a total subversion of it, by an arbitrary suspension of the governing powers, that they asserted their own rights, and restored the government by resuming them.

On the 8th of July, lord Pigot refused, as president, to put a question to the board (upon the regular motion of a member), for rescinding a resolution before entered into. This refusal left the majority no choice between an absolute surrender of their trusts, and an exercise of them without his ministerial assistance; there was no other alternative in the absence of a superior coercive authority, to compel him to a specific performance of his duty; but they proceeded no farther than the necessity justified; they did not extend the irregularity (if any there was) beyond the political urgency of the occasion.—Although their constitutional rights were infringed by the president's claim, they formed no plan for their general vindication; but contented themselves with declaring, on that particular occasion, that, as the government resided in them, the president ought not to refuse putting the question, and that the resolution ought to be rescinded.

When the president again refused to put the question in the month following, for taking into consideration the draughts of instructions to colonel Stuart (which was the immediate cause of all the disturbances that followed), they again preserved the same mo-

deration, and never dreamt of any farther vindication of their authority, thus usurped, than should become absolutely necessary for the performance of the trusts delegated to them by the Company, which they considered it to be treachery to desert. They lamented the necessity of departing even from form; and, therefore, although the president's resolution to emancipate himself from their constitutional controul, was avowed upon the public minutes of the consultations, they first adjourned without coming to any resolution at all, in hopes of obtaining formality and regularity to their proceedings, by the president's concurrence:—disappointed in that hope by his persevering to refuse, and driven to the necessity either of surrendering their legal authority, or of devising some other means of exercising it without his personal concurrence, having (as before observed) no process to compel him to give it, they passed a vote approving of the instructions, and wrote a letter to col. Harper, containing orders to deliver the command to col. Stuart; but they did not proceed to sign it at that consultation, still hoping, by an adjournment, to gain lord Pigot's sanction to acts legal in all points by the constitution of the government, except, perhaps, in wanting that form which it was his duty to give them.

The use which lord Pigot made of this slowness of the majority to vindicate the divided rights and spirit of the government, by a departure from even its undecided forms, notwithstanding the political necessity which arose singly from his own illegal refusal, is very luckily recorded by one of his lordship's particular friends in council, and a party to the transaction, as it would have been, otherwise, too much to have expected full credit to it from the most impartial mind.

"It had been discussed," says Mr. Dalrymple, "before the council met, what measures could be taken to support the government established by the Company, in case the majority should still persist in their resolution to come to no compromise or reference of the matter in question, to the decision of the court of directors, but to carry things to extremity. One mode occurred to lord Pigot, viz. by putting colonel Stuart in arrest if he obeyed an order without the governor's concurrence. To this many objections arose. Colonel Stuart might contrive to receive the orders without the garrison, and consequently, by the new military regulations, not be liable to the governor's arrest: if he was arrested, the majority would, of course, refuse to issue a warrant for a court-martial, and confusion and disgrace must be the consequence.

"The only expedient that occurred to any of us, was, to ground a charge in case of making their declaration in the name of the council, instead of the president and council; but here an apprehension arose, that they would see this impropriety, and express their order, not in the name of the council, as they had hinted, but in the name of the president and council, main-

taining that the majority constituted the efficient board of president and council. In this case, we could devise no measure to be pursued consistent with the rules of the service; but lord Pigot said there was no fear of this, as he insisted the secretary would not dare to issue any order in his name when he forbade it. It was impossible to know, whether sir Robert Fletcher would attend, or not; it was necessary to have every thing prepared, that nothing might be to be done in council; the Company's orders required the charge to be in writing; THE GOVERNOR, THEREFORE, HAD IN HIS POCKET CHARGES PREPARED FOR EVERY PROBABLE CONTINGENCY, whether they began at the eldest or the youngest, and whether the form was an order from themselves, or an order to the secretary; and whether sir Robert Fletcher was present, or not. It was agreed, that the first of us to whom the paper was presented for signing, should immediately hand it to the president, who was then to produce the charge; the standing orders directing that members, against whom a charge is made, should have no seat; the members charged were, of course, deprived of their votes. As our ideas went no farther than relieving the governor from the compulsion the majority wanted to lay him under, it was determined to suspend no more than the necessity of the circumstance required."

With this snare laid for them during the interval of that adjournment, which their moderation had led them to, the council met on the 22d of August, and, after having recorded their dissent from the president's illegal claim, to a negative on their proceedings, by refusing to perform his part in the prosecution of them (though strictly enjoined thereto by the standing orders of the Company), and in which refusal he still obstinately persisted, they entered a minute, declaring it as their opinion, that the resolution of the council should be carried into execution without farther delay, and that the instructions to colonel Stuart, and the letter to colonel Harper, should be signed by the secretary by order of council.

This minute was regularly signed by a majority, and the president having again positively refused his concurrence, they prepared a letter to Mr. Secretary Sullivan, approving of the instructions to colonel Stuart, and the letter to lieutenant-colonel Harper.

The letter thus written, in the name of the majority, and under their most public and avowed auspices, it was the immediate purpose of all of them to have signed in pursuance of the minute they had just before delivered in, expressive of their authority to that purpose; but the president, according to the ingenious plan preconcerted during the adjournment, snatched the paper from Mr. Brooke after he and Mr. Stratton had signed it, before the rest of the majority could put their names to it, and pulling a written accusation out of his pocket, charged them as being guilty of an act subversive of the government; put the question of suspension on both at once, and ordered the secretary to take neither of their

votes, which, according to Mr. Dalrymple's economical scheme of illegality, exactly got rid of the majority, by his own (the accuser's) casting vote.

The weakness and absurdity of the principle (if it deserves the name) on which this suspension was founded, creates a difficulty in seriously exposing it by argument; yet, as it produced all the consequences that followed, I cannot dismiss it without the following remarks:

First, It was a gross violation of the constitution of the government, even admitting lord Pigot to have been that integral part of it, which he assumed to be, as the establishment of that claim could only have given him a negative on the proceedings of a majority, but never could have enabled him to fabricate one so as to do positive acts without one; the sudden charge and suspension of Messrs. Stratton and Brooke, and breaking the majority by putting the question on both at once, would, therefore, have been irregular, even supposing the concurrence of the majority to the act which constituted the charge against them, to have been unknown to lord Pigot, and the minority who voted with him: but when their concurrence was perfectly known; when the majority of the board had just before publicly delivered in a minute, expressive of their right to authorize the secretary to sign the order, if the president refused to do it; when the order was avowedly drawn out in pursuance of that minute, which made the whole one act, and was in the regular course of signing by the majority, who had just before declared their authority to sign it; the snatching the paper under such circumstances, while unfinished, and arraigning those who had already signed it under the auspices of the majority, as being guilty of an act subversive of the government, lodged in that majority, and turning it into a minority by excluding the votes of the parties charged, was a trick upon the governing powers which they could neither have submitted to with honour to themselves, or duty to their employers.

Such a power, however, lord Pigot assumed over the government of Fort St. George, by converting an act of the majority, rendered necessary by his refusal to do his duty, into a criminal charge against two members acting under their authority, and by a device too shallow to impose on the meanest understanding, cut them off from acting as part of that majority, by which the powers of the government were subverted, and passed away from them while they were in the very act of saving them from subversion.

It is unnecessary to say, that they were neither called upon in duty, nor even authorized, had they been willing, to attend the summons of a board so constituted by the foulest usurpation; a board at which they must either have sacrificed their consciences and judgments, or become the vain opposers

of measures destructive to the interests of their employers; they therefore assembled, and answered the illegal summons, by a public protest against the usurped authority by which it issued. To this council, assembled for the single purpose of sending such protest, they did not, indeed, summon the subverters of the government against whom it was levelled; affairs were arrived at too dangerous a crisis to sacrifice substance to forms, which it was impossible should have been regarded. Lord Pigot and his associates, on receiving the protest against the proceedings of the 22d of August, completed the subversion of the constitution, by the suspension of the rest of the majority of the council, and ordered sir Robert Fletcher, the commander-in-chief, to be put under arrest, to be tried by a *court-martial*, for asserting the rights of the *civil* government as a member of the council. This is positively sworn to have been done by lord Pigot before their assumption of the government. Here then was a crisis in which it was necessary to act with decision; and, in asserting their rights by civil authority, to save the impending consequences of tumult and blood.—The period of temporizing was past, and there was no doubt of what it was their duty to do. Charged with the powers of the government, they could not surrender them with honour, and it was impossible to maintain them with safety or effect, while their legal authority was treated as usurpation and rebellion. They, therefore, held a council, and agreed that the fortress and garrison should be in their hands, and under their command, as the legal representatives of the Company, and, as there was every thing to dread from the intemperance of lord Pigot's disposition, they, at the same time, authorized colonel Stuart to arrest his person if he thought it necessary to preserve the peace of the settlement; colonel Stuart *did* think it necessary, and his person was accordingly arrested; but, during his necessary confinement, he was treated with every mark of tenderness and respect.

Such, my lord, is the case—and it is much to the honour of the defendants, that not a single fact appeared, or was attempted to be made appear, at the trial, that did not stand avowed upon the face of their public proceedings; I say, literally none; for I will not wheel into court that miserable post-chaise, nor its flogged postillion, the only living birth of this mountain which has been two years in its labour; every thing, and the reason and motive of every thing, appeared, and still appear, to speak and plead for themselves. No cabals;—no private meetings;—no coming prepared for all possible events;—no secret manufacture of charges;—no tricks to overcome majorities;—but every thing fair, open, and manly, to be judged of by the justice of their employers, the equity of their country, and the candour and humanity of the civilized world. As long as the government subsisted, their parts appear to have been acted in it

with regularity and fidelity, nor was it till after a total subversion of it, by the arbitrary suspension of the governing powers (*and in the absence of all superior visitation*), that they asserted their own rights, and restored the government by reassuming them. The powers so assumed, appear to have been exercised with dignity and moderation; the necessary restraint of lord Pigot's person was not tainted with any unnecessary rigour, but alleviated (notwithstanding the dangerous folly of his friends) with every enlargement of intercourse, and every token of respect; the most jealous disinterestedness was observed by Mr. Stratton in not receiving even the lawful profits of magistracy; and the temporary authority, thus exerted for the benefit of their employers, was resigned back into their hands with cheerfulness and submission; resigned, not like rapacious usurpers with exhausted revenues; disordered dependencies, and distracted councils, but with such large investments, and such harmonious dispositions, as have been hitherto unknown in the Company's affairs in any settlement in the East.

Your lordships are, therefore, to decide this day on a question never before decided, or even agitated in any English court of justice; you are to decide upon the merits of A REVOLUTION—which, as all revolutions must be, was contrary to established law, and not legally to be justified. The only revolutions which have happened in this land, have been, when Heaven was the only court of appeal, because their authors had no human superiors; and so rapidly has this little island branched itself out into a great empire, that I believe it has never occurred that any disorder in any of its foreign *civil* dependencies, has been the subject of judicial inquiry; but, I apprehend that, since the empire has thus expanded itself, and established governments *at distances inaccessible to its own ordinary visitation and superintendence*, all such subordinate governments, all political emanations from them, must be regulated by the same spirit and principles which animate and direct the parent state. Human laws neither do nor can make provision for cases which suppose the governments they establish to fall off from the ends of their institutions; and, therefore, on such extraordinary emergencies, when *forms* can no longer operate, from the absence of a superior power to compel their operation, it strikes me to be the duty of the component parts of such governments, to take such steps as will best enable them to preserve the *spirit* of their trusts; in no event whatsoever to surrender them, or submit to their subversion; and, by considering themselves as an epitome of the constitution of their country, to keep in mind the principles by which that constitution has been preserved, and on which it is established.

These are surely fair premises to argue from, when the question is not *technical* justi-

fection, but *palliation* and *excuse*. The members of the council, in the majority of which the efficient government of Madras resided, were certainly as deeply responsible to the India Company in conscience, and on every principle of society, for the preservation of its constitution, from an undue extension of lord Pigot's power, as the other component parts of this government are answerable to the people of this country for keeping the king's prerogative within its legal limits; there can be no difference but that which I have stated, namely, that the one is subordinate, and the other supreme. But as, in the total absence of the superior power, subordination to it can only operate by an appeal to it for the ratification or annulment of acts already done, and not for directions what to do (otherwise, on every emergency, government must entirely cease), I trust it is not a strained proposition, to assert, that there can be no better rule of action, when subordinate rulers must act somehow, owing to their distance from the fountain of authority, than the history of similar emergencies in the government of their country, of which they are a type and an emanation.

Now, my lord, I believe there is no doctrine more exploded, or more repugnant to the spirit of the British government, because the revolution is built upon its ruin, than that there must be an imminent political necessity, analogous to natural necessity, to justify the resistance of the other component parts of the government, if one steps out of its delegation, and subverts the constitution; I am not speaking of technical justification.—It would be nonsense to speak of law and a revolution in the same sentence.—But I say, the British constitution, which is a government of law, knows no greater state necessity than the inviolate preservation of the spirit of a public trust from subversion or encroachment, no matter whether the country would fall into anarchy or blood, if such subversion or encroachment were suffered to pass unresisted.—A good Whig would swoon to hear such a qualification of resistance, even of the resistance of an integral part of legislation, much less of a part merely ministerial, which, in all governments, must be subordinate to the legislature, wherever it resides. Such a state necessity, analogous to natural necessity, may be necessary to call out a private man, but is not at all applicable to the powers of a government. The defendants did not act as *private* men, but as *governing powers*; for, although they were not, technically speaking, the government, when not assembled by the president; yet they were in the spirit of law, and on every principle of human society, the rulers of the settlement.—The information charges the act as done by them in the public capacity of members of the council, in the majority of which the government did reside; and their act must, therefore, be taken to be a public act, for the preservation of their

delegated trusts, from subversion by lord Pigot, which, on the true principle of British government, is sufficient to render resistance meritorious, though not legal.

Where was the imminent state necessity at the Revolution in this country? King James suspended and dispensed with the laws.—What laws?—Penal laws against both Papists and Protestant Dissenters. Would England have fallen into confusion and blood if the persecuted Papist had been suffered publicly to humbug himself with the mystery of transubstantiation, and the Independent to say his prayers without the mediation of a visible church?—Parliament, on the contrary, immediately after the Revolution, repealed many of those intolerant laws, with a preamble to the act that abolished them, almost copied verbatim from the preamble of the proclamation by which the king suspended them; yet, that suspension (although king James was, I trust, something more of an integral part of this government than lord Pigot was of that of Madras) most justly cost him the crown of these kingdoms. What was the principle of the Revolution? I hope it is well known, understood, and revered by all good men. The principle was, that the trustees of the people were not to suffer an infringement of the constitution, *whether for good or for evil*. All tyrants are plausible and cunning enough to give their encroachments the show of public good.—Our ancestors were not to surrender the *spirit* of their trusts, though at the expense of the *form*, and though urged by no imminent state necessity to defend them; no other, at least, than that which I call, and which the constitution has ever since called the first and most imminent of all state necessities, *the inviolate preservation of delegated trusts from usurpation and subversion*. This is the soul of the British government.—It is the very being of every human institution which deserves the name of government;—without it, the most perfect model of society is a painful and laborious work, which a madman, or a fool, may, in a moment, kick down and destroy.

Now, why does not the principle apply ~~here~~? Why may not inferiors, in the absence of the superior, justly, though not legally, at all events without sanguinary punishment, do, by a *temporary act to be annulled, or ratified, by such superior*, that which the superior would do finally, where there is no appeal at all? Will you punish men who were obliged, from their distance from the fountain of authority, to act for themselves, only for having, at all events, refused to surrender their trusts?—only for having saved the government, committed to their charge, from subversion?—only for having acted, as it was the chief glory of our ancestors to have acted? The similitude does not, to be sure, hold throughout; but all the difference is in our favour; our act was not peremptory and final, but temporary and submissive to annulment;

nor is the president of a council, equal only to each other individual in it, with an office merely ministerial, to be compared with the condensed executive majesty of this great kingly government, with a negative in legislation.

The majority of the council was the efficient government of Madras, or, in other words, the legislature of the settlement, whose decisions the Company directed should be the order by which each one was to act, without giving any negative in legislation to the president, whose office was consequently (as I have before said) ministerial. This ministerial office he not only refused to perform, but assumed to himself, in effect, the whole government by dissolving a majority against him. Let me put this plain question to the Court.—Ought such arbitrary, illegal dissolution to have been submitted to?—Ought the majority, which was, in fact, the whole government in substance, spirit, and effect, though not in regular form, to have suffered itself to be thus crumbled to pieces, and destroyed? Was there, in such a case, any safe medium between suffering both spirit and form to go out together, and thus sacrificing the form to preserve the spirit? and could the powers of the government have been assumed or exercised without bloodshed, if lord Pigot had been left at large? I appeal to your lordships, whether human ingenuity could have devised a *middle road* in the absence of all superior controul? Ought they to have acquiesced, and waited for the sentence of the directors, and, on his motion, played at shuttlecock with their trusts across the globe, by referring back questions to Europe, which they were sent out to Asia to decide? Where representatives *doubt* what are the wishes of their constituents, it may be proper to make such appeals; but, if they were subject to punishment for not consenting to them, whenever one of their body proposed them, government would be a mere mockery. It would be in the power of the president, whenever he pleased, to cripple all the proceedings of the council. It puts me in mind of the embargo once laid upon corn by the crown, during the recess of parliament, which was said, in a great assembly, to be but forty days tyranny at the outside; and it equally reminds me of the celebrated constitutional reply which was made on that occasion, which it would be indelicate for me to cite here, but which, I trust, your lordship has not forgotten.*

This would have been not only forty days tyranny at the outside, but four hundred days tyranny at the inside.—It would have been a base surrender of their trusts, and a cowardly compromising conduct unworthy of magistracy.

But the defendants are, notwithstanding

* Lord Mansfield's speech in the House of Lords against the dispensing power. See New Parl. Hist. vol. 16, p. 661.

all this, convicted; surely, then, either the jury, or I, mistake. If what I have advanced be sound or reasonable in principle, the verdict must be unjust. By no means. All I have said is compatible with the verdict. Had I been on the jury, I should have found them guilty; but, had I been in the House of Commons, I would have given my voice against the prosecution. Conviction! Good God! how could I doubt of conviction, when I know that our patriot ancestors, who assisted in bringing about the glorious Revolution, could not have stood justified in this Court, though king William sat on the throne, but must have stood self convicted criminals without a plea to offer in their defence, had not parliament protected them by acts of indemnity!

Nothing that I have said could have been uttered without folly to a *Jury*. It could not have been uttered with less folly to your lordship, sitting in judgment, on this case, on a *special verdict*. They are not arguments of law; they are arguments of state, and the state ought to have heard them before it awarded the prosecution; but, having awarded it, *your lordships now sit in their place to do justice*. If the law, indeed, had prescribed a *specific* punishment to the fact charged, the judgment of the law must have followed the conviction of the *fact*, and your lordship could not have mitigated the sentence. They could only have sued to the state for indemnity. It would, in that case, have been the sentence of the law, not of the judge. But it is not so here. A judge, deciding on a misdemeanor, is bound in conscience, in the silence of law, not to allot a punishment beyond his opinion of what the law, in its distributive justice, would have specifically allotted.

My lord, if these arguments, drawn from a reflection on the principles of society in general, and of our own government in particular, should, from their uncommonness in a court of justice, fail to make that immediate and decided impression, which their justice would otherwise insure to them, I beseech your lordship to call to mind, that the defendants who stand here for judgment, stand before you for acts done as the rulers of a valuable, immensely extended, and important country, so placed at the very extremity of the world, that the earth itself travels round her orbit in a shorter time than the Eastern deputy can hear the voice of the European superior; a country surrounded, not only with nations which policy, but which Nature, violated Nature! has made our enemies, and where government must, therefore, be always on the watch, and in full vigour, to maintain dominion over superior numbers by superior policy.—The conduct of men, in such situations, ought not surely to be measured on the narrow scale of municipal law.—*Their acts must not be judged of like the acts of a little corporation within the reach of a mandamus,*

or of the executive strength of the state.—I cannot, indeed, help borrowing an expression from a most excellent and eloquent person, when the conduct of one of our colony governments was, like this, rather hastily arraigned in parliament. “I am not ripe,” said a member of the House of Commons, “to pass sentence on the gravest public bodies, intrusted with magistracies of great weight and authority, and charged with the safety of their fellow-citizens on the very same title that I am; I really think, that for wise minds, this is not judicious; for sober minds, not decent; for minds tinctured with humanity, not mild and merciful.”* Who can refuse his assent to such admirable, manly sentiments?—What, indeed, can be so repugnant to humanity, sound policy, decency, or justice, as to punish public men, acting in extremities not provided for by positive institution, without a corrupt motive proved, or even charged upon them? I repeat the words again, that every man’s conscience may *force* him to follow me, *without a corrupt motive proved, or even charged upon them.*

Yet it has been said, that PUBLIC EXAMPLE ought to weigh heavily with the Court in pronouncing judgment.—I think so too.—It ought to weigh heavily indeed; but all its weight ought to be placed in the saving, not in the vindictive scale. PUBLIC EXAMPLE requires that men should be secure in the exercise of the great *public* duties they owe to magistracy, which are paramount to the obligations of obedience they owe to the laws as *private* men. PUBLIC EXAMPLE requires that no magistrate should be punished for an error in judgment, even in the common course of his duty, which he ought to know, and for which there is a certain rule; much less for an act like this, in which he must either do wrong by seizing the trust of another, or do wrong by surrendering his own.—PUBLIC EXAMPLE requires that a magistrate should stand or fall by his HEART;—that is the only part of a magistrate vulnerable in law in every civilized country in the world.—WHO HAS WOUNDED THE DEFENDANTS THERE? Even in this fertile age of perjury, where oaths may be had cheap, and where false oaths might be safe from the distance of refutation, no one champion of falsehood has stood forth, but the whole evidence was read out of a book *printed by the defendants themselves, for the inspection of all mankind.*

What, then, has produced this virulence of prosecution in a country so famed for the humanity of its inhabitants, and the mildness of its laws?—*The death of lord Pigot during the revolution in the government?* Strange, that malice should conjure up so improbable an insinuation, as that the defendants were

interested in that unfortunate event; no event, indeed, could be to them more truly unfortunate. If lord Pigot had lived to return to England, this prosecution had never been.—His guilt and his popularity, gained by other acts than these, would have been the best protection for THEIR friendless innocence. Lord Pigot, besides many connexions in this country, had a brother, who has, and who deserves to have, many friends in it.—I can judge of the zeal of his friends, from the respect and friendship I feel for him myself; a zeal, which might have misled me, as it has many better and wiser than I, if my professional duty had not led me to an early opportunity of correcting prejudice by truth.—Indeed, some of the darkest and most dangerous prejudices of men arise from the most honourable principles of the mind.—When prejudices are caught up from bad passions, the worst of men feel intervals of remorse to soften and disperse them; but when they arise from a generous, though mistaken source, they are hugged closer to the bosom, and the kindest and most compassionate natures feel a pleasure in fostering a blind and unjust resentment.—This is the reason, that the defendants have not met with that protection from many, which their meritorious public conduct entitled them to, and which has given rise to a cabal against them so unworthy the legislature of an enlightened people; a cabal which would stand forth as a striking blot upon its justice, if it were not kept in countenance by a happy uniformity of proceeding, as this falling country can well witness.—I believe, indeed, this is the first instance of a criminal trial in England, canvassed for like an election, supported by defamation, and publicly persisted in, in the face of a court of justice, without the smallest shadow of evidence. This deficiency has compelled the counsel for the crown to supply the baldness of the cause with the most foreign invective; foreign, not only in proof, but in accusation. In justice to them, I use the word *compelled*, as, I believe, none of them would have been inclined, from what I know of their own manners and dispositions, to adopt such a conduct without a most imminent *Westminster-hall necessity*, viz. that of saying something in support of a cause, which nothing but slander and falsehood could support. Their duty as *public* and *private* men was, perhaps, as incompatible as the duty of my clients; and they have chosen, like them, to fulfil the *public* one; and, indeed, nothing less than the great ability and eloquence (*I will not say the propriety*) with which that public duty was fulfilled at the trial, could have saved the prosecution from ridicule and contempt. As for us, I am sure we have lost nothing with the world, or with the Court, by our moderation; nor could the prejudices against us, even if the trial had not dispelled them, reach us within these venerable walls.—Nothing, unsupported by

* See Mr. Burke’s speech in the House of Commons, on moving his Resolutions for Conciliation with America; March 22, 1775. New Parl. Hist. vol. 18, p. 503.

evidence, that has been said here, or any where, will have any other effect upon the Court, than to inspire it with more abundant caution in pronouncing judgment.—Judges in this country are not expected to shut themselves up from society; and, therefore, when a subject that is to pass in judgment before them, is of a public and popular nature, and base arts have been used to excite prejudices, it will only make wise and just magistrates (such as I know, and rejoice that I am addressing myself to) the more upon their guard, rigidly to confine all their views to the record of the charge which lies before them, and to the evidence by which it has been proved, and to be doubly jealous of every avenue, by which human prejudices can force their way to mislead the soundest understandings, and to harden the most upright hearts.

Mr. Attorney General (in reply) said, that if justice was not baffled, this case would prove an excellent precedent. He observed, that the affidavits of the defendants were singularly conceived: they look like memorials to the Court for preferment. They say they got nothing by the revolution; omitting to state the immense list of friends and dependants, for whom they provided at Madras. He called God to witness, that he was not convinced, that the letter of the 25th of August did not import an intention to assassinate. When the defendants determined to usurp the government and imprison lord Pigot, they did not foresee all the dangers of such an attempt: but after the alarm which it produced, they began to apprehend, that if his lordship should regain his liberty, their design could not be effected—the letter of the 25th was consequent on a commotion in the settlement; and as an order to major Horne, (who had before received a military order for his conduct), or as to any thing except to convey the hint respecting his lordship's life, that letter was totally absurd. It was followed on the 27th by an attempt to execute it, by removing his lordship at twelve o'clock at night, by Edingtoun, the man, of all others, the most likely to create an alarm, and to occasion resistance; and it produced that effect: lord Pigot refused to go: and if it had not been for the steadiness of the European artillery-men, in all probability *his life must have answered for it*. It is observable, too, that in the postscript of the letter of the 25th, there is a party of the nabob's horse mentioned, as obtained for such purposes as major Horne should see necessary. On the night of the 27th, there was a party of these horse actually stationed on the road. Mr. Attorney General said, he did not suppose this a lying in wait to assassinate. But the inference from the whole was, that a scuffle was to ensue, in which his lordship was to be dispatched. (He said much stress had been laid on the expression, "*this you are to intimate to him.*") He observed, that in order

to produce the effect, to cause a resistance, it was necessary his lordship should be informed of it. It is said by the defendants, that they only meant to intimidate lord Pigot: it is clear, then, they meant his lordship should believe, that they intended to carry their menace into execution. Suppose there had been an attempt to rescue, and the death of lord Pigot had ensued, could the defendants have said, that their orders were exceeded, for that they only meant to intimidate? He observed, that major Horne in his affidavit, which was read for the defendants, does not attempt to say, that if the order to remove lord Pigot had been persisted in, his lordship's death would not have ensued. He concluded with saying, that for his own part, he would rather that the Court should discharge the defendants without any punishment, and with a recommendation to the East India Company, than that they should inflict a small fine, which would be but a mockery of justice.

February 10th.

JUDGMENT OF THE COURT.*

Mr. Justice Ashhurst; (*Willes the senior puisne judge absente.*)

Before I proceed to give the judgment of the Court in the cause of the King v. Stratton, in order that the grounds and reasons of our judgment may be the better understood, I shall go a little at large into the case, and into the several heads of aggravation on the one hand, or extenuation on the other, which arise out of, or have been introduced into the case.

This was an information that was filed against the four defendants by the Attorney-General;—the first count of which states, that the East India Company were possessed of Fort St. George; that they appointed lord Pigot governor and commander in chief of the fort, garrison, and of the Company's troops and forces therein; they also appointed lord Pigot president and governor, and the defendants, along with several others, to be of the council, and they gave to the president and council, or the major part of them, the full powers of the government, subject, nevertheless, to the superintending and controlling power of the governor and council of Bengal, in all cases wherein they were invested with that power, by an Act made in the 13th year of his present majesty's reign.

The information states, that lord Pigot arrived in India, and took upon himself the government, and that the defendants severally took upon themselves and accepted the office of one of the council.—It states the instructions given to the president and council; by which, among other things, they were directed to take the most effectual measures for pro-

* This Report is reprinted from the original publication.

protecting the king of Tanjore and his family, and to inform him they had determined to place him on the throne. It states, that lord Pigot, soon after his arrival in India, began to put in execution his orders and instructions for restoring the king of Tanjore; and that he, with the council, did restore him to the throne, and was about to proceed in the securing him in the possession of his territories and revenues, but that the defendants maliciously and seditiously intending to deprive lord Pigot of the government, and of his office of president and governor, and to prevent him from discharging his duty, and the trust reposed in him in carrying the said instructions of the Company into effect, and to assume to themselves the government and command of the said fort and garrison, did, with divers others, unlawfully and seditiously form themselves into a council, and did confer the command of the army upon James Stuart, and did order him to put the fort and garrison under the command of them, the defendants; and that if any resistance should be made to their orders, to secure the person of lord Pigot; and that they afterwards did actually arrest and imprison lord Pigot, and by force deprive him of the power and capacity to, &c. &c. and with a military force continued him so imprisoned for the space of nine months; and during that time unlawfully assumed to themselves the government of the army, and fort and garrison of Fort St. George, with its dependencies.

This is the first count.—The second as to the charges is pretty much the same with the first, only it drops all the introductory matter; it charges the defendants with the assuming the government, and imprisoning the person of lord Pigot.—The three last counts are different from the two first, for in them the assumption of the government is dropped, and the charge is nothing more than the imprisonment of the person of lord Pigot, he being governor of Fort St. George.

Upon this information the defendants have been found guilty.

If the assumption of the government, and taking possession of the fort, had been with an intent to draw it from the dominion of the crown of Great Britain, it would have been high-treason; but the information states the intent of the defendants in assuming the government to be to substitute themselves in the place of those in whom by the constitution it was vested, and that in subordination to the East India Company, and therefore rightly treats it as a misdemeanor only.

By the constitution of the government of Fort St. George, the powers of government are lodged in the president and council, but subject to the controlling power of the governor and council of Bengal, in matters of peace and war, or concluding treaties with any Indian princes or powers. They are likewise, by the terms of this act, to transmit to the governor and council of Bengal, advice and intelligence of

all transactions and matters whatever relating to the government or the interests of the Company. The president is an integral part of the assembly, but when the council is met, he has only a single voice in common with the rest of the council, except in cases of an equality of numbers, when that happens he has a casting voice. He has no right to put a negative upon any act of the council; and it is a part of his duty to put any question proposed and debated in the council.

Having stated the constitution, I shall now proceed to state the history of the case, and the several circumstances that lead to the catastrophe which afterwards happened in this settlement.

On the 25th of June, 1776, a letter from colonel Stuart to sir Robert Fletcher, dated the 13th of June, was produced at the council, by which he represents, that as the command of the troops in the garrison of Tanjore was at that crisis the most important of any under that presidency, according to the course of military service, it belonged to him as second in command, in case sir Robert Fletcher, who was the commander in chief, did not chuse to accept it.—This letter was ordered to lie on the table.

At a council the 8th of July, 1776, it having been resolved at a previous council, that none of the members should visit the nabob, sir Robert Fletcher moved to rescind this resolution. The president, lord Pigot, declares, that he never will consent that the question should be put, that the business of the board ought to originate with the president; he refuses to put the question proposed by sir Robert Fletcher, and insists on his right to negative any question being put.

On the 9th of July, the majority enter their protest against the powers claimed by the president as unconstitutional and arbitrary.—Colonel Stuart's letter was then taken into consideration, and there was a majority of seven to four for his appointment.

On the 19th of August, 1776, a paper of instructions for colonel Stuart was laid before the council for their consideration. The president again proposed Mr. Russell's going to Tanjore, which was negatived by six to four.—The draft of the instructions to colonel Stuart was then read. The president declares he never will give his sanction to any instructions to colonel Stuart, until his measure is adopted of sending Mr. Russell to Tanjore. Mr. Floyer desiring that the question may be put; the president declares, that, for the reasons he has before alleged, he will not put the question at that time: upon this refusal, the board is adjourned till next day.—The next day the question was again moved; the president declared that, having determined not to give his consent to colonel Stuart's going to Tanjore until Mr. Russell be ordered to proceed thither likewise, he would not allow the matter to be now agitated at the board; the members however entered minutes of their

opinions, and the instructions were approved by a majority.—Mr. Mackay moved, that a letter be prepared for colonel Harper to give up the command to colonel Stuart.—The president declares it as his opinion, that without his name to the orders to colonel Stuart, they are not the act of the government.

At a council, 22d of August, a minute was delivered in by the majority, declaring that the president's refusal to put the question for taking colonel Stuart's instructions into consideration, was unconstitutional and illegal; that the minority are obliged to assist in carrying the orders of the majority into execution; and that the president is as much bound by this order as any other member, and declare it as their opinion, that in case of the president's refusal to put any question proposed by any member, it shall be the duty of their secretary to put such question.—The president desires the matter may rest until the pleasure of the Company be known.—The majority insist on proceeding, and call on the president to direct, that the secretary should sign the instructions to colonel Stuart, and the letter to colonel Harper; and upon his refusal, declare that they look upon themselves as authorized so to do.—The president declares he will not give his orders to the secretary, in consequence of which the following letter was written: "Mr. Secretary Sullivan—Sir; We, the majority of the board, having approved of the instructions to colonel Stuart, and the letter to lieutenant colonel Harper; and the president not only having refused to sign them himself, but also refused to order you to do it; we are reduced to the disagreeable necessity of directing you to sign the said instructions and letter by order of council, and send them to colonel Stuart. (Signed) George Stratton, Henry Brooke." As soon as the letter was signed by them, the president took it into his possession, saying he would now stop it where it was, and delivered in the following paper: "I charge George Stratton and Henry Brooke, esqrs. of being guilty of an act subversive of the authority of government, and tending to introduce anarchy, in the signing orders to the secretary to give instructions to colonel Stuart, which have not been approved and passed by the president and the council." When the president took the paper, the others of the majority were about to sign it, but were prevented from so doing by the paper being snatched from the hand of Mr. Brooke. The president then moves, that George Stratton and Henry Brooke be now suspended from the Company's service, until the Company's pleasure be known. The secretary was ordered to take no vote from Mr. Brooke or Mr. Stratton, as the standing orders direct, that no member shall sit in council when a charge is delivered in against him, therefore the numbers being equal, it was carried for a suspension by the president's casting vote.—A notification of

their suspension is ordered by the president to be sent to Mr. Stratton and Mr. Brooke.

It appears, that lord Pigot proceeded to still farther acts of violence, for, on the 23d of August, in consequence of a resolution come to in a council, to which only Mr. Russel, Mr. Stone, Mr. Dalrymple, and Mr. Latham were summoned; he suspends Mr. Floyer, Mr. Palmer, Mr. Jourdan, and Mr. Mackay, and sends them a notification of their suspension; an order was likewise issued for the arrest of sir Robert Fletcher, in order that he might be tried by a court-martial.

I forbear commenting on these proceedings of lord Pigot, farther than, in general, to observe, that they certainly were arbitrary and illegal, and so indeed it was admitted by the counsel for the prosecution. These outrages, as the defendants say, were the causes of their assuming the government and imprisoning lord Pigot. It was left doubtful upon the evidence, whether those orders of lord Pigot, or the orders signed by the defendants for the arresting of lord Pigot, were prior in point of time; lord Pigot's orders are dated Friday afternoon, 23d of August; the defendants' orders at the heading are dated Friday evening, the 23d of August, but at the end are dated 23d of August, three o'clock, P. M.; but this matter seems to be very amply cleared up by the defendants' affidavits, which at present stand uncontradicted, for they say, that their order was not signed or formed till eight o'clock in the evening, and that the date 23d August, three o'clock, P. M. was a mistake in the figure, which seems probable, as the heading, as I said before, is Friday evening. They have further sworn, that some of the members were actually served with the orders of suspension, and sir Robert Fletcher with the order of arrest, before the forming of their order, and that they apprehended danger to their persons from the violence of lord Pigot; and they farther positively say, "That the removal and suspension of lord Pigot, was not the result of any premeditated design, but that, on the contrary, until lord Pigot, and his friends in the minority, had, by artifice and violence, on the 22d of Aug. 1776, suspended these deponents, Stratton and Brooke, for the purpose of usurping the government; the idea of separating themselves from the minority had not even entered the minds of these deponents, and that until the issuing of the resolutions and orders of the 23d of August, for the arresting and trying sir Robert Fletcher by a court martial as for a capital offence, and for suspending all the other gentlemen in the majority, an intention of removing lord Pigot had never been conceived by these deponents." They likewise add, in another part of the affidavit, that at the time they took upon themselves the administration of the affairs of the settlement, they did then verily believe, that by the nature of their commission, and by the tenor of the Company's orders, relative to the powers of the president

and council, they, as a majority of the council, had a competent power so to do; and that the restraint put upon the person of lord Pigot was a step absolutely necessary to give effect to the power they then conceived to be vested in a majority of the council, independent of the president, and as such, justifiable and legal. And Mr. Sullivan, the secretary (who is a disinterested person) says, that his notion of the government of Fort St. George, as to the majority having all the powers of government in them, was the same as that of the defendants.

The counsel for the prosecution, by way of shewing that the supposed necessity was not the real motive which actuated the defendants, have endeavoured to prove, that their conduct proceeded from other motives: they have assigned two, the one, that the acts they have done were done to prevent lord Pigot from completely fulfilling the instructions of the Company as to the restoring the rajah of Tanjore; the other, that they proceeded from some corrupt influence either of the nabob or Paul Benfield. In regard to the first of these, which is mentioned in the first count of the information, though not by way of substantive charge, we do not think there is any evidence in the cause from whence it can be inferred; lord Pigot, in his letter from Tanjore, on the 14th of April, 1776, to the council of Fort St. George, says, that he has restored the rajah to the government of his country. The council, in their letter to the Company of the 14th of May, 1776, says, "The rajah is put into the full possession of the whole country his father held in 1762." Therefore that business seems to have been closed, and of course the motives could not be to prevent that from being done which actually was done; but if they mean to connect with this the claim of the nabob, and to say he could not be in complete possession till the dispute was settled, whether the rajah should have the crop which was upon the ground at the time he was restored, or whether the nabob or Mr. Benfield, claiming under an assignment from the nabob, should have it, as the expence of culture was paid with the nabob's money: in this view, the imputation will appear to be equally unsupported when I come to consider the next head, namely, the supposed corrupt influence of the nabob and Benfield. The affair of Benfield's claims was closed two months before the dispute happened, which gave rise to that act of the defendants which is now the subject of discussion; for the consultation, when it was agreed to reconsider Benfield's claims, was on the 3d of June, 1776; on the 13th and 14th of June, the former resolution of disallowing the claim was rescinded, and the claim allowed; on the 17th of June an explanatory minute was entered, that they mean not to do more than to recommend to the rajah to see that justice be done, leaving the manner and time to himself, and that they had not an

idea that they ought to go further without orders from their superiors. Here then the affair seems to rest; the prosecutors have not given any evidence that any one step has been taken from that time to this relative to this business, and therefore as no evidence is given, we must suppose the affair rests in the same situation as it did on the 13th of June, 1776: but it is not left on presumption only, for the defendants, in their affidavit, have positively sworn—"That neither the nabob of Arcot, or the said Paul Benfield, ever had, or had either of them, to the knowledge or belief of the deponents, derived, obtained, or received any benefit or advantage by, from, or in consequence of the removal or suspension of lord Pigot; and that he was not so removed or suspended with a view to accommodate or serve them, or either of them;" and they further add, "that the same claims, as they verily believe, still remain just as they did on the 17th of June, 1776;" and as to any corrupt influence, the defendants have positively sworn "that the interest of Benfield or the nabob did not, in any respect, operate upon, or influence them in their conduct, in the removal or suspension of lord Pigot, or in any of the transactions which are the subject of this prosecution; and that they never had, nor had any of them, or any other person in trust for them, any part, share, or interest in the claims of Benfield, or in the monies due, or alleged to be due, in respect thereof; and that they, nor any of them, did not take, accept, receive, or expect to receive from the nabob of Arcot, or any other person or persons whatsoever, any sum, or sums of money, or any gratuity, gift, reward, donation, or present of any kind or sort whatsoever, or any profit, benefit, or advantage whatsoever, or any security, bond, engagement, or promise for any sum, or sums of money, gratuity, reward, gift, donation, or present of any kind or sort whatsoever, or any profit, benefit, or advantage whatsoever, for or in respect, or on account of their, or any of their voting or resolving, or on account of any other part of their conduct at the presidency of Fort St. George, either as members of the council or otherwise, in or during the months of June, July, or August, 1776, or at any other time, or in respect, or on account of the removal or suspension of lord Pigot, or any of the transactions which are the subject of this prosecution." This affidavit has been very nicely and critically remarked upon by the prosecutor's counsel, but we all think words cannot well convey a more explicit or pointed denial, but if the affidavit was silent, the *evidentia rei* speaks stronger than any affidavit. For if the obstructing this part of the Company's orders or instructions, or any corrupt influence of the nabob or Benfield for the purpose of facilitating their claims, were the motives to induce the defendants to usurp the government, can it be supposed that from the moment they

got the government into their hands, they should not take any one step to obtain satisfaction of the claims?

These two topics of aggravation, therefore, we think ought to be laid out of the case, and cannot, with any degree of fairness, be connected with the subsequent disputes between lord Pigot and the council, which did not commence until the 19th of August, above two months afterwards, and which originated from a claim of preference of colonel Stuart given in to the council, by which he insists on his right to be sent to Tanjore as a superior command, and as the post of honour, there having been, before that time, some intelligence received of some hostile preparation, by the French and Hyder Ally, on the side of Pondicherry, as appears from a letter of lord Pigot's of the 13th of June, 1776.

These were the principal topics of aggravation insisted upon by the prosecutor, for I take no notice of the supposed intention to take away the life of lord Pigot, that having been laid out of the case, upon the motion for judgment, as wholly groundless.

The defendants, besides relying upon the supposed necessity of the act, have proved, as a circumstance in their favour, the sentiments expressed by the council at Bengal upon the subject. It appears that the defendants, and likewise lord Pigot, immediately after the event happened, sent an account of their proceedings to the presidency of Bengal, both sides seeming to acknowledge this presidency as a sort of superior tribunal, to whom they were accountable for their proceedings, under the powers vested in them by the statute of the 13th of his present Majesty. The presidency of Bengal, in a letter to the majority of the council, dated the 10th of September, 1776, in which they acknowledge the receipt of their letter, and likewise of lord Pigot's, say, "The rights and powers of the government of Fort St George being, by the original constitution, vested in a majority of the members who compose that body, and the intemperate conduct of lord Pigot, your late president, in forcibly excluding two of your members from their seats at the board, having been the cause of the unhappy separation of the majority of your board from the minority, in this alarming and dangerous situation of your government, we think it incumbent on us to declare, that we acknowledge the title and authority which we understand you have been thus compelled to assume, in consequence whereof, we have resolved to support you in the government by all the means which you may require from us, and we have it in our power to grant." And in a letter from the governor and council of Bengal, of the same date, to lord Pigot, after expressing their concern for what had happened, they say, "We deem it incumbent on us to declare, that the rights and powers of the governor and council of any of the Company's presidencies, are vested by the original constitu-

tion, in the majority of the board. That the violence committed by your lordship, in excluding two of the members of the council of Fort St. George from their places, was a violation of the constitution; that the measures taken by the majority to recover the actual government, which of right is vested in them, arose from the necessity of the case, and that we shall acknowledge and support the title and authority which they consequently possess: in doing this it is sufficient for us to know, that we are supporting the legal and constitutional government of the Company, though we are not yet perfectly informed of all the train of facts which have brought the government of Madras into the present situation." It is farther urged on the behalf of the defendants, as an argument of the uprightness of their intentions, in assuming the power, that when they were in possession of it, they were not guilty of any abuse in the administration of the Company's affairs. We don't find that any charge of that kind has been imputed to them on the part of the prosecution, and, on the contrary, it is sworn by the defendants, that the settlement of Madras was in a flourishing state during the time they held the government, and that the amount and increase of the revenues and investments and the value and returns during that period, exceeded those of any other period of like duration; that order, peace, and tranquillity were maintained in the settlement, and the army was in so good a condition, and so prudently disposed, as greatly to contribute to the subsequent reduction of Pondicherry; and that when Mr. Whitehill arrived in August, 1777, they cheerfully and readily gave up the government to those to whom the Company had delegated it.

There is another matter which has made an impression not intended, that is, the earnestness with which we were urged to disable the East India Company from employing any of the defendants during the whole course of their lives, for that is the only effect of the sentence of incapacity. One's imagination might suggest cases in which it might be a prudent caution in the legislature to give such discretion to this Court. The servants of the Company might be guilty of speculation and oppressions which might redound to the advantage of the Company or some individuals of it, as well as of themselves, but to the disgrace of the national honour. Therefore the jealousy of the legislature thought fit to intrust a controlling power in other hands, who are no ways interested in the subject; but this is not a case of that kind. From the nature of the subject, the prejudices of every member of the Company must be against resistance to their own governor, and their own authority, against revolutions in their settlements, by means of their army. No man in England could have any share or interest in what passed in Madras upon this occasion, because it was sudden and unpremeditated,

and it is sworn that no gain or profit arose from the revolution. No instance has been shewn in which the Company has hitherto favoured the defendants—they are suspended:—they are convicted:—If any of the defendants should be employed again by the Company, it will be but from a persuasion that they, in general, look upon what the defendants have done in a venial light, from their motive, intention, and object in doing it. If the Company should entertain that opinion of their conduct, it will be the addition of a greater authority than that of the council at Bengal, and may be the means of removing the strong impression made by their conviction.

Having thus gone through every topic that suggests itself to me in your favour, I must now address myself to you:—George Stratton, Henry Brooke, Charles Floyer, and George Mackay, you are called up to receive the judgment of this Court; and it is my duty to tell you, that the result of our judgment upon the several circumstances stated is, that though they tend to lessen the guilt of what you have done, from your intention, motive, and object in doing it, and must certainly weigh in the scale of mitigation, yet the offence of which you are convicted is a grave and serious crime, and of most dangerous example, and so must be deemed in consequence of the verdict itself. You are not convicted of a formal transgression of law, but upon the merits of your justification, though it may be very difficult to define what would be a legal justification of your acts: yet the jury was not told, that in strictness of law, you could not in any event be justified, but the occasion, with all its facts and circumstances, was left to their consideration. They were told what was necessary to produce that natural necessity which, in a court of law, was sufficient to justify crimes and wrongs. If they found analogous circumstances to concur in your case in forming that crisis which you insisted upon as a justification, they might venture to acquit you; and though some observations were made to shew that the analogy did not exist in the present case, yet the whole case was left to the jury with great latitude. Your case therefore is not like that of magistrates convicted through their having mistaken the forms of law. No forms of law could warrant your imprisoning the governor, and assuming the government. Even if the act you had done was in your judgment necessary, you should have endeavoured to have restored the government as nearly to its ancient standard as circumstances would admit, after you had confined lord Pigot; but instead of this, you followed lord Pigot in the conduct you condemned in him, and proceeded to a suspension of three members of the council, Russel, Dalrymple, and Stone.

Though it is fit therefore, on the one hand, we should bear in mind that fundamental rule of criminal judicature, that the measure of

punishment should be in proportion to the degree of malignity appearing in the intention of the offender,* it is not the less necessary that we should have a view to example, that others may learn how dangerous it is, even in a case attended with many favourable circumstances, for men arbitrarily to assume powers inconsistent with the nature of that government with which they are entrusted.

As you all concurred in the several acts which are the objects of this information, we do not see any ground for making any discrimination in the punishment.

This Court, therefore, having taken all the circumstances into consideration, and having regard to the loss you have already sustained by being deprived of your situations in India, do order and adjudge that you severally pay a fine to the king of 1,000*l.* each, and that you severally be imprisoned until your respective fines be paid.

The fines were immediately paid in court, and the defendants discharged.

It seems probable that there are some mistakes in the report of this judgment; which, agreeably to my general practice, I have not ventured to correct.

To lord Erskine's Speech for the defendants, in mitigation of punishment, is subjoined (*Misc. Speeches of Lord Erskine, when at the Bar, 8vo. 1812, p. 79*) the following Note:

"The Court, by its judgment, only imposed a fine of 1,000*l.* upon each of the defendants; a sentence which, we believe, was considered at the time by the whole profession of the law, and by all others qualified to consider such a subject, as highly just and proper, under all the circumstances of the case. The accusation was weighty, but the judges were bound, by their oaths, to weigh all the circumstances of mitigation, as they appeared from the facts in evidence, and from the pleadings of the counsel at the bar. They were not to pronounce a severe judgment, because the House of Commons was the prosecutor. Mr. Burke, however, who had taken a very warm, and, we have no doubt, an honest part, in the prosecution, took great offence at the lenient conclusion; and repeatedly animadverted upon it in the House of Commons. There can be no doubt of the high value of the privilege possessed by the representatives of the people, to be public accusers; but for that very reason they can have no right to determine, or to interfere with the judgments of other tribunals, when

* See this fundamental principle of jurisprudence as to crimes, most clearly stated, most finely delineated, most ably and eloquently enforced, and most splendidly illustrated by lord Erskine in his Speech for Mr. Cuthell, A: D. 1799.

they themselves are the prosecutors. If judges, indeed, conduct themselves corruptly, or partially, upon a prosecution by the House of Commons, or upon any other judicial proceeding whatsoever, it is a high and valuable privilege of the people's representatives in parliament to proceed against the offenders by impeachment; but it is not the duty of any member of that high assembly, to disparage the decisions of the judges, by invidious observations, without any public proceeding which may bring their merits, or demerits, into public examination. Such a

course is injurious to those who have been the subjects of them; disrespectful to the magistrates who have pronounced them; and contrary to the spirit and character of the British constitution."

Of Philip Carteret Webb's Case, cit. p. 1048, there is a report in vol. 19, p. 1172.

With respect to Mr. Whitehill, mentioned in the preceding report, p. 1290, see stat. 22 G. 3, c. 69.

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OF
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TO THE

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F. HARGRAVE, Esq.		T. B. HOWELL, Esq.

1814.

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It is presumed that the principle upon which it is constructed will appear to be so plain, that a slight explanation will be sufficient for its general application.

The first Column is merely an enumeration of the pages, in each successive Volume of the last Folio Edition : the second Column indicates the pages in which the same matter will be found in the present Octavo Edition.

It is to be observed, that the whole of Mr. Hargrave's Collection of State Trials is comprized in the first Twenty Volumes of the present Edition ; but as the following Table is printed in a form completely independent of any part of the Work itself, it may either be bound separately, which may be thought, in some cases, preferable, or with the Twentieth Volume, or any other Volume, at the option of the possessor.

Peterboro' Court, Aug. 1814.

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9		1107		7		1233	
630		1109		8		1236	
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	8*	463		611
	9*	465		614
	600*	468		616
	1*	470		618
	2*	472		620
	3*	474		622
	4*	476		625
	5*	479		627
	6*	481		629
	7*	483		631
	8*	485		633
	9*	487		635
	610*	488		637
	11*	490	6*	640
	12*	492	7*	642
	13*	494	8*	644
	14*	496	9*	647
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	16*	501	1*	651
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	3*	544	680*	673
	4*	546	1*	675
	5*	549	2*	677
	6*	551	3*	679
	7*	553	4*	681
	8*	555	5*	683
	9*	557	6*	685
630*		559	7*	687
	1*	562	8*	689
	2*	564	9*	691
	3*	566	690*	693
	4*	568	1*	695
	5*	571		697
	6*	573		700
	7*	575		702
	8*	577		704
	9*	582		706
640*		584		708
	1*	586		716
	2*	588		718
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11*		742	5		896
12*		744	6		898
13*		746	7		900
14*		748	8		902
15*		750	9		905
16*		752	610		907
17*		754	11		909
18*		756	12		911
19*		758	13		914
20*		760	14		916
1*	720*	762	15		918
2*		765	16		920
3*		767	17		923
4*		768	18		925
5*		771	19		927
6*		773	620		929
7*		774	1		932
8*		776	2		934
9*		778	3		936
10*		789	4		938
11*	730*	791	5		940
12*		793	6		943
13*		795	7		945
14*		797	8		947
15*		800	9		949
16*		802	630		952
17*		804	1		954
18*		806	2		956
19*		808	3		958
20*		810	4		961
1*	740*	813	5		963
2*		815	6		965
3*		817	7		967
4*		819	8		970
5*		821	9		972
6*		824	640		974
7*		825	1		977
8*		826	2		979
9*		828	3		981
10*		831	4		984
11*	750*	833	5		986
12*		835	6		988
13*		837	7		991
14*		863	8		993
15*	589	865	9		995
16*	590	867	650		998
17*	1	869	1		1000
18*	2	871	2		1002
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160		1270	18		309
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2		1274	220		313
3		1276	1		315
4		1278	2		317
5		1280	3		320
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9		1289	7		326
170		1291	8		327
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2		1296	230		329
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270	1	...	391		8	...	506
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	6	...	401		2	...	515
	7	...	402		3	...	517
	8	...	404		4	...	519
	9	...	406		5	...	520
280	1	...	408		6	...	522
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	3	...	411		8	...	526
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290	1	...	424		5	...	539
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300	1	...	443		4	...	556
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	8	...	459	360	1	...	568
	9	...	461		2	...	570
310	1	...	464		3	...	572
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	3	...	468		5	...	576
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	5	595	5		1		5
	6	597	6		2		6
	7	599	7		3		7
	8	601	8		4		8
	9	603	9		5		9
380	1	605	1		6		10
	2	608	2		7		11
	3	612	3		8		12
	4	614	4		9		13
	5	617	5		440		14
	6	619	6		1		15
	7	621	7		2		16
	8	623	8		3		17
	9	625	9		4		18
	10	628	10		5		19
390	1	630	1		6		20
	2	632	2		7		21
	3	634	3		8		22
	4	637	4		9		23
	5	639	5		450		24
	6	641	6		1		25
	7	644	7		2		26
	8	646	8		3		27
	9	648	9		4		28
	10	650	10		5		29
	11	653	11		6		30
400	1	655	1		7		31
	2	657	2		8		32
	3	659	3		9		33
	4	662	4		460		34
	5	664	5		1		35
	6	666	6		2		36
	7	668	7		3		37
	8	671	8		4		38
	9	674	9		5		39
	10	675	10		6		40
410	1	677	1		7		41
	2	679	2		8		42
	3	680	3		9		43
	4	680	4		470		44
	5	682	5		1		45
	6	684	6		2		46
	7	686	7		3		47
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	9	690	9		5		49
	10	745	10		6		50
	11	748	11		7		51
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420	1	751	1		9		53
	2	753	2		470		54
	3	755	3		1		55
	4	758	4		2		56
	5	760	5		3		57
	6	761	6		4		58
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	9		9		7		61
	10		10		8		62
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	31		31		9		83
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	33		33		1		85
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	51		51		9		103
	52		52		470		104
	53		53		1		105
	54		54		2		106
	55		55		3		107
	56		56		4		108
	57		57		5		109
	58		58		6		110
	59		59		7		111
	60		60		8		112
	61		61		9		113
	62		62		470		114
	63		63		1		115
	64		64		2		116
	65		65		3		117
	66		66		4		118
	67		67		5		119
	68		68		6		120
	69		69		7		121
	70		70		8		122
	71		71		9		123
	72		72		470		124
	73		73		1		125
	74		74		2		126
	75		75		3		127
	76		76		4		128
	77		77		5		129
	78		78		6		130
	79		79		7		131
	80		80		8		132
	81		81		9		133
	82		82		470		134
	83		83		1		135
	84		84		2		136
	85		85		3		137
	86		86		4		138
	87		87		5		139
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	93		93		1		145
	94		94		2		146
	95		95		3		147
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	101		101		9		153
	102		102		470		154
	103		103		1		155
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	110		110		8		162
	111		111		9		163
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	125		125		3		177
	126		126		4		178
	127		127		5		179
	128		128		6		180
	129		129		7		181
	130		130		8		182
	131		131		9		183
	132		132		470		184
	133		133		1		185
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	153		153		1		205
	154		154		2		206
	155		155		3		207
	156		156		4		208
	157		157		5		209
	158		158		6		210
	159		159		7		211
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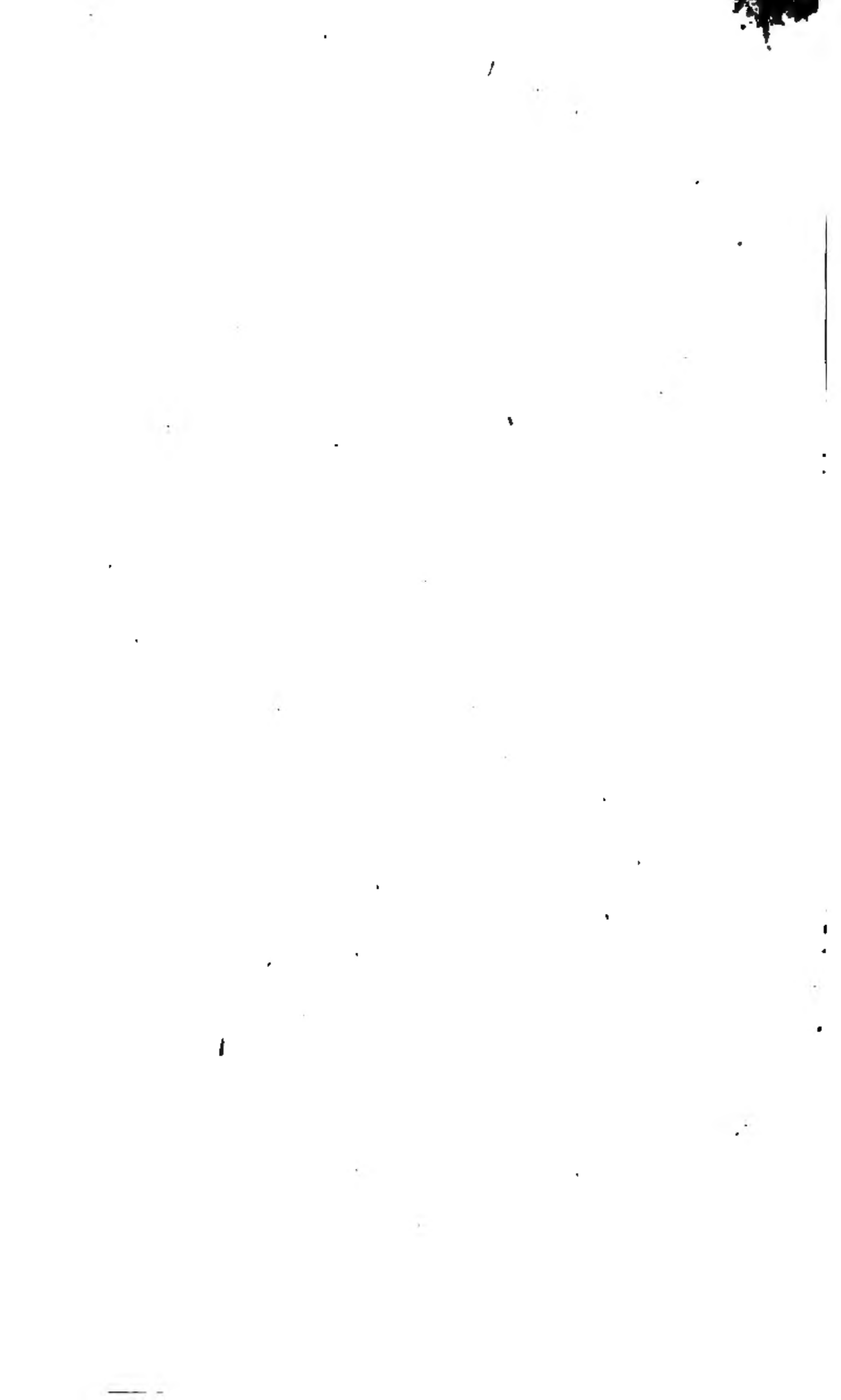
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